APPENDIX B.

In the District Court of Appeal

SECOND APPELLATE DISTRICT

State of California

LIEBMANN BREWERIES, INC., a corporation,

Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES,

Respondent.

PETITION FOR WRIT OF MANDATE.

(Code Civ. Proc., Sec. 416.3.)

To the District Court of Appeal, Second Appellate District, State of California, and to the Honorable Presiding Justice and Associate Justices Thereof:

Your Petitioner, Liebmann Breweries, Inc., respectfully applies for Writ of Mandate (Code Civ. Proc., Sec. 416.3) by this, its verified Petition, to compel the Honorable Superior Court of the State of California, in and for the County of Los Angeles, to enter an Order to set aside its Order for substituted service of process and to quash service of Summons upon Petitioner, and in its behalf sets forth the following facts and causes for issuance of a Writ of Mandate, namely:

I.

On or about June 12, 1958, UPA Pictures, Inc., UPA Enterprises and Columbia Pictures Corporation, some-

times hereinafter referred to as "Real Parties in Interest," filed in the Superior Court of the State of California in and for the County of Los Angeles, a Summons on Amended Complaint and Amended Complaint in case number 698923 in said Court entitled "UPA PICTURES, INC., UPA ENTERPRISES and COLUMBIA PICTURES CORPORATION, Plaintiffs, vs. FOOTE, CONE & BELDING, INC., LIEBMANN BREWERIES, INC. and RHEINGOLD BREWING COMPANY, Defendants," in the form of "Exhibit A" attached hereto and incorporated by reference herein as though set forth in full hereat.

II.

The causes of action brought by the Plaintiffs were for breach of contract against the Defendants. They allege damages for breach of contract against the Defendants upon alleged written agreements dated November 11, 1955, and January 21, 1956, for the production of television commercials and the licensing of a fanciful cartoon character "Mr. Magoo" for advertising Rheingold Beer in the State of California.

III.

On or about November 28, 1958, the Honorable A. Edwards Nichols, Court Commissioner of the Superior Court of the State of California in and for the County of Los Angeles, purported to issue an alleged Order for Service of Process upon the Secretary of State in the said case No. 698923, which purported to order that service of process in the said case No. 698923 upon Defendant, Liebmann Breweries, Inc., be made by personal delivery of a copy of the Summons and Complaint therein, together with a copy of the said purported Order, to the Secretary of State, or to an assistant or Deputy Secretary of State, and that such process and Order then be sent

by the Secretary of State to said Defendant, Liebmann Breweries, Inc., at its business address at 36 Forrest Street, Brooklyn 6, New York. A copy of said Order is attached hereto as "Exhibit B" and incorporated by reference herein as though set forth in full hereat.

IV.

On or about January 5, 1959, pursuant to Section 416.1 of the Code of Civil Procedure, and a Stipulation by and between the said "Real Parties in Interest" by and through their counsel Youngman, Hungate & Leopold. Richard Hungate and Glenn Warner, and the Petitioner, appearing specially only, by and through its counsel, Coyle and Cooper and Leon M. Cooper, the said Honorable Superior Court on good cause appearing therefor ordered that the Petitioner, appearing specially only for the purpose of moving to quash service of Summons and without submitting itself to the jurisdiction of the said Superior Court, shall have until January 23, 1959, within which to serve and file its Notice of Motion to Quash Service of Summons upon the Petitioner upon the ground of lack of jurisdiction over it. A copy of said Stipulation and Order is attached hereto as "Exhibit C" and incorporated by reference herein as though set forth in full hereat.

V.

On or about January 22, 1959, the Petitioner, appearing specially only for the purpose of making a Motion so to do, without submitting itself to the jurisdiction of said Superior Court, and for no other purpose, filed, served and made its Notice of Motion to vacate and set aside the Order for Service of Process and to quash the service of summons. A copy of said Motion is attached hereto as "Exhibit D" and incorporated by reference herein as though set forth in full hereat.

VI.

Said Motion was made and based upon the said Notice, the Affidavit of Walter H. Liebman in Support of said Motion, Points and Authorities in Support of said Motion, and the records and files in the said case, and any other affidavits, declarations or documents which might have been filed in said case prior to the hearing of said Motion.

Prior to the hearing on the said Motion the "Real Parties in Interest" filed Affidavits and offered certain portions of depositions in evidence in opposition to the Motion, and the Petitioner filed Supplemental Affidavits and Supplemental Points and Authorities in Support of the said Motion.

Copies of the Affidavit of Walter H. Liebman, the Supplemental Affidavit of Walter H. Liebman and the Declaration of Frank E. Delano, all in support of the Motion, are attached hereto as "Exhibits E, F and G" respectively and incorporated by reference herein as though set forth in full hereat.

VII.

Hearings on said Motion were had, and argument was presented to the said Honorable Superior Court, in Department 67 thereof, the Honorable Evelle J. Younger, Judge Presiding, on March 30, 1959, and on April 3, 1959.

VIII.

The said Superior Court denied the Motion. On April 7, 1959, the said Youngman, Hungate & Leopold, attorneys for the "Real Parties in Interest" served notice upon the Petitioners by serving their attorneys of record that the said Honorable Superior Court had denied the said Motion.

IX.

This Petition seeks a Writ of Mandate in this Honorable Court to compel the said Honorable Superior Court to set aside its said Order for Service of Process upon the Secretary of State, and to Quash the service of Summons on the Petitioner in the said Superior Court case.

X.

The Honorable Superior Court of the State of California in and for the County of Los Angeles should be Ordered, by this Honorable Court, to set aside its said Order for Service of Process upon the Secretary of State and to Quash Service of Summons on Petitioner because:

1. Petitioner is a New York corporation organized under and by virtue of the laws of the State of New York;

2. The Petitioner never has and does not now transact or do any corporate or other business within the State of California;

3. Petitioner does not maintain any agent, officer, or other person in the State of California upon whom service of Summons can be made;

4. The said Honorable Superior Court has no jurisdiction over Petitioner and has no basis for asserting jurisdiction over Petitioner;

5. The attempt to obtain jurisdiction over the Petitioner by service of process on the Secretary of State of the State of California, which is not authorized by Petitioner to accept service of process for or on its behalf, is a deprivation of Petitioner's rights to due process of law, contrary to the provisions of the Fourteenth Amendment of the United States Constitution, and Article I, Section 13, Clause

6, of the Constitution of the State of California, and provisions of the Code of Civil Procedure and the Corporations Code of the State of California.

XI.

In support of this Petition, your Petitioner respectfully submits the following facts which are more specifically set forth in the said Affidavit of Walter H. Liebman ["Exhibit E" hereto], the Supplemental Affidavit of Walter H. Liebman ["Exhibit F" hereto], and the Declaration of Frank E. Delano ["Exhibit G" hereto], all of which are incorporated by reference herein as though set forth in full hereat:

1. Liebmann Breweries, Inc., is a New York corporation. It is in the business of brewing and selling beer and other malt beverages and the by-products thereof in the New York and New England area. In order so to do, Liebmann Breweries, Inc., carries a license to manufacture and sell beer in, among other states, the State of New York. Liebmann Breweries, Inc., does not now, nor did it at any of the times stated in the Amended Complaint herein ["Exhibit A"] nor at the time of the purported service of Summons upon Petitioner herein apply for, or hold, a license to manufacture, sell, or import beer or alcoholic beverages in the State of California.

2. Liebmann Breweries, Inc., does not now, nor did it at any of the times stated in the Amended Complaint herein ["Exhibit A"] nor at the time of the purported service of process solicit the sale, nor advertise the sale, of its beer or products in the State of California. It had no and has no salesmen or officers or employees engaged in carrying on any business in the State of California. It had no and has no inventory in the State of California. It did not and does not import beer into the State of California. It had no and has no offices in California.

3.- The corporate activities of Liebmann Breweries, Inc., are carried on at its principal office at 36 Forrest Street, Brooklyn, 6, New York. The officers and directors of Liebmann Breweries, Inc., reside either in the State of New York or close to the New York metropolitan area. They neither reside in, nor do they carry on any business in, the State of California.

4. Liebmann Breweries, Inc., has never filed its Articles of Incorporation with the Secretary of State of the State of California, or with the County Clerk of any County of the State of California. It has never filed any statements in the manner and form of California Corporations Code, Section 6403, with the Secretary of State of the State of California, nor has it ever designated an agent for the service of process in the State of California.

5. Liebmann Breweries, Inc., has never paid nor does it have any liability to pay any corporate franchise tax, or sales tax, or use tax, or real property tax, or personal property tax, or unemployment withholding tax in or to the State of California. Liebmann Breweries, Inc., has never been required to carry insurance under the Workmen's Compensation Law of the State of California.

6. Liebmann Breweries, Inc., is not, and never has been, in the business of producing television spot commercials in the State of California, nor the supervision of television spot commercials in the State of California. It has never engaged in the State of California in the business of causing television commercials to be viewed by the public in the State of California for the purpose of promoting the sale of Rheingold Beer in the State of California.

7. Liebmann Breweries, Inc., has never entered into any contract with the Plaintiffs, nor has anyone on be-

half of Liebmann Breweries, Inc., entered into any contracts with the Plaintiffs for the licensing of Liebmann Breweries, Inc., to use a fanciful character named Mr. Magoo in television spot commercials or otherwise for the purpose of advertising the sale of Rheingold Beer in the State of California.

8. Rheingold Brewing Company was originally incorporated under and pursuant to the laws of the State of California on June 2, 1933, under the name of Rex Brewing Company. Thereafter, on July 23, 1933, its name was changed to California Brewing Association of Southern California. On March 29, 1935, its name was changed to Acme Brewing Company, and on March 9, 1954, to Rheingold Brewing Company, Los Angeles, Subsidiary of Liebmann Breweries, Inc., N. Y.

9. Prior to 1954, Rheingold Brewing Company, under the name of Acme Brewing Company, conducted an extensive business of manufacturing, distributing, and selling beer in the State of California, principally under the label of Acme Beer.

10. In 1954 the stock of certain corporations which owned the stock of Acme Brewing Company was sold with the result that ultimately Liebmann Breweries, Inc., owned approximately five-sixths (5/6) of the stock of Continental Holding Corporation, which in turn owned a majority of the stock of the corporations owning the stock of Rheingold Brewing Company. Approximately one-sixth (1/6) of the stock of Continental Holding Corporation is owned by Bohemian Distributing Company, a California Company, a California corporation. None of the stockholders of Bohemian Distributing Company are stockholders of Liebmann Breweries, Inc., nor are any of the stockholders of Liebmann Breweries, Inc., stockholders of Bohemian Distributing Company.

11. The existence of Rheingold Brewing Company under its former corporate names antedates by Eleven (11) years the purchase by Liebmann Breweries, Inc., of any interest in any corporation which owned stock in corporations owning stock in Rheingold Brewing Company. Rheingold Brewing Company was not, therefore, created, nor does it exist, nor has it ever existed as a means or device for Liebmann Breweries, Inc., to do business in the State of California. It was and is a separate corporation.

12. Rheingold Brewing Company maintains separate books and records, a separate office, and has its own stockholders, officers and directors. Rheingold Brewing Company handles its own purchases and sales and has always conducted itself as a separate corporation, maintaining its separate corporate existence as an entity apart from Liebmann Breweries, Inc.

13. During the course of the original negotiations in connection with the licensing of the character Mr. Magoo, Liebmann Breweries, Inc., negotiated in the State of New York for the right to use the character Mr. Magoo in advertising Liebmann Breweries, Inc.'s products in the New York Area. Such discussions, commencing in September, 1955, were continued during the months of October and November, 1955. Drafts of the proposed contracts were prepared and are appended as Exhibits 1 and 2 of the Supplemental Affidavit of Walter H. Leibman ["Exhibit F"]. They should be compared with Exhibits A, A-1 and C to the Amended Complaint herein ["Exhibit A"].

14. In these preliminary negotiations it was contemplated that the advertising agency, Foote, Cone & Belding, would produce commercials for and obtain the licensing of the cartoon character Mr. Magoo for advertising the

sale of the beer produced by Liebmann Breweries, Inc., in the New York area, and by Rheingold Brewing Company in California. The negotiations with regard to the production for television viewing and the licensing in the New York area of the cartoon character for Liebmann Breweries, Inc., never culminated in the execution of any contracts. Thus, Liebmann Breweries, Inc., never entered into any contract with the Plaintiffs for the licensing of, or the production of television spot commercials involving a cartoon character.

15. In June, 1956, further discussions and negotiations were undertaken by representatives of Liebmann Breweries, Inc., and representatives of the Plaintiffs for the right to license and produce television films of Mr. Magoo for commercial purposes in the New York area to advertise the product of Liebmann Breweries, Inc. Again, drafts of proposed agreements were prepared. They are attached as Exhibits 3, 4 and 5 to the Supplemental Affidavit of Walter H. Liebman ["Exhibit F"]. They should be read in light of the executed Exhibits A, A-1, B and C to the Amended Complaint herein ["Exhibit A"]. The proposed agreements were never executed, although Exhibit B to the Amended Complaint was executed and limited the licensed area to California and the city of Yuma, Arizona.

16. Through an inadvertence, the name Liebmann Breweries, Inc., which had been included in the drafts of the agreements when they had contemplated the licensing for use in the New York Area, was left on the finally executed agreements. It is clear that this was an inadvertence, not only from the Affidavits, but also from the contracts. The language refers to Foote, Cone & Belding as the agent for Rheingold Brewing Company *and/or* Liebmann Breweries, Inc. The word *"or"* should be con-

strued to apply in the event that one or the other is not meant to be a party to the agreement. Paragraph 1 of Exhibit A to the Amended Complaint ["Exhibit A"] limits the license to use the cartoon character for the purpose of "advertising, publicizing, and promoting Client, its products and services, in the territory hereinafter specified, over television only in connection with programs sponsored in whole or in part by Client . . ."

17. Thus, when Liebmann Breweries, Inc.'s marketing territory was eliminated from the contract, it was no longer a "Client" within the contemplation of the agreement, since it could not advertise itself or its products or services in California or Arizona. Its name was left on only through an inadvertence. Liebmann Breweries, Inc., was not a party to any of the agreements.

XII.

Unless said Order and decision of the said Superior Court denying Petitioner's Motion to Quash Service of Summons be set aside by this Honorable Court, the said Honorable Superior Court will attempt to assert jurisdiction over Petitioner and deprive Petitioner by so doing of property without due process of law.

XIII.

The remedy by appeal is no plain speedy or adequate remedy in the ordinary course of law for the reason that an appeal does not lie either from the said Order for Service of Process upon the Secretary of State or from the Order denying Petitioners said Motion in the Superior Court; to compel Petitioner to submit to an unwarranted trial of said cause and then appeal from Judgment, if adverse to it, would not afford a plain or speedy

or adequate remedy in the ordinary course of law. Unless commanded by this Honorable Court to set aside the said Order for service of Process upon the Secretary of State and to quash the said Service of Summons on Petitioner in the said Superior Court action the said Honorable Superior Court, Respondent herein, and the said "Real Parties in Interest" threaten to and will proceed with the trial of the said cause.

XIV.

Your Petitioner is the party benefically interested in this Petition for Writ of Mandate, and the names of the parties who will be affected by this Petition are the Superior Court of the State of California in and for the County of Los Angeles, and the "Real Parties in Interest," namely UPA Pictures, Inc., UPA Enterprises and Columbia Pictures Corporation, who have appeared in the said Superior Court action by and through their attorneys, Youngman, Hungate & Leopold, and Richard Hungate and Glenn Warner, 6505 Wilshire Boulevard, Los Angeles 48, California.

XV.

This Petition for Writ of Mandate is filed in the above entitled Honorable Court as an original proceeding for the reason that the said Respondent has refused and still refuses to set aside the said Order for Service of Process upon the Secretary of State and to quash the said Service of Summons upon Petitioner in the said Superior Court action, and unless restrained and compelled by this Court, will proceed with the trial of said cause, and your Petitioner has no plain, speedy or adequate remedy in the ordinary course of law.

Wherefore, your Petitioner prays:

That an Alternative Writ of Mandate issue out of and under the seal of this Honorable Court, directed to said Honorable Superior Court, commanding it to vacate and set aside its Order for service of process in the said Superior Court action upon Liebmann Breweries, Inc., by service of a copy of the Summons and Complaint in the said Superior Court action, together with a copy of the said Order on the Secretary of State of the State of California, and sending of such process and Order by the said Secretary of State to your Petitioner herein at its business address, 36 Forrest Street, Brooklyn 6, New York, and to quash, annul and set aside the alleged service of Summons upon Liebmann Breweries, Inc., your Petitioner herein, or to show cause before this Honorable Court at a specified time and place why said Respondent has not done so, and for such other and further relief to which Petitioner may be entitled.

COYLE & COOPER,

.....

By LEON M. COOPER,

Attorneys for Petitioner.

I, the undersigned, Leon M. Cooper, say:

1. I am the attorney for Liebmann Breweries, Inc., a corporation, Petitioner herein.

2. Said Liebmann Breweries, Inc., is the Petitioner in the above entitled action, and is a New York corporation and its place of business is in the City of Brooklyn, State of New York, and it has no place of business in California, and has no officers or agents in the State of California, or in the County of Los Angeles, State of California, where I have my office, and that I make this verification for and on behalf of the said party for that reason.

3. I have been informed and believe as to the allegations contained in the foregoing Petition for Writ of Mandate in the above entitled action, and upon such information and belief state that I believe these matters to be true.

4. I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 9, 1959.

(s) LEON M. COOPER.

Leon M. Cooper.

Exhibit A.

Youngman, Hungate & Leopold
Richard Hungate, Glenn Warner
Attorneys for Plaintiff
6505 Wilshire Boulevard
Los Angeles 48, California

In the Superior Court of the State of California in and for the County of Los Angeles.

UPA Pictures, Inc., UPA Enterprises and Columbia Pictures Corporation, Plaintiff vs. Foote, Cone & Belding, Inc., Liebmann Breweries, Inc. and Rheingold Brewing Company, Defendant. No. 698923.

Action brought in the Superior Court of the County of Los Angeles, and Complaint filed in the Office of the Clerk of the Superior Court of said County.

SUMMONS ON AMENDED COMPLAINT.

The People of the State of California send greetings to: Foote, Cone & Belding, Inc., Liebmann Breweries, Inc. and Rheingold Brewing Company, Defendant.

You are directed to appear in an action brought against you by the above named plaintiffs in the Superior Court of the State of California, in and for the County of Los Angeles, and to answer the Amended Complaint therein within ten days after the service on you of this Summons, if served within the County of Los Angeles, or within thirty days if served elsewhere, and you are notified that unless you appear and answer as above required, the plaintiffs will take judgment for any money or damages demanded in the Amended Complaint, as arising upon contract, or will apply to the Court for any other relief demanded in the Amended Complaint.

Given under my hand and seal of the Superior Court of the County of Los Angeles, State of California, this 12th day of June, 1958.

(SEAL SUPERIOR COURT
LOS ANGELES COUNTY)

HAROLD J. OSTLY, County Clerk
and Clerk of the Superior Court
of the State of California, in
and for the County of Los An-
geles

By /s/ K. MEACHEM, Deputy.

Appearance: "A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him." (Sec. 1014, C. C. P.)

Answers or demurrers must be in writing, in form pursuant to rule of court, accompanied with the necessary fee, and filed with the Clerk.

Youngman, Hungate & Leopold
Richard Hungate
Glenn Warner
6505 Wilshire Boulevard
Los Angeles 48, California
OLive 3-0490
Attorneys for Plaintiffs

In the Superior Court of the State of California in and for the County of Los Angeles.

UPA Pictures, Inc., UPA Enterprises and Columbia Pictures Corporation, Plaintiffs, vs. Foote, Cone & Belding, Inc., Liebmann Breweries, Inc., and Rheingold Brewing Company, Defendants. No. 698923.

AMENDED COMPLAINT FOR DAMAGES FOR BREACH OF CONTRACT.

Cause of Action of Plaintiffs UPA Enterprises and Columbia Pictures Corporation

Plaintiffs UPA Enterprises and Columbia Pictures Corporation, and each of them, allege:

I

Plaintiff UPA Enterprises (herein called "Enterprises") was at all times herein mentioned, and now is, a California corporation. Plaintiff Columbia Pictures Corporation (herein called "Columbia" was at all times herein mentioned, and now is, a New York corporation authorized to do business in California.

II

Defendant Foote, Cone & Belding, Inc. was at all times herein mentioned, and now is, a Delaware corporation authorized to do and doing business in California. Defendant Rheingold Brewing Company was at all times herein

mentioned, and now is, a California corporation. Defendant Liebmann Breweries, Inc. was at all times herein mentioned, and now is, a corporation doing business in California.

III

On or about November 30, 1955, and concurrently with the making of the "Production Agreement" referred to in Paragraph XIV of this Complaint, defendants jointly and severally entered into a written agreement with Enterprises and Columbia, a copy of which is attached hereto, marked Exhibit A, and by this reference incorporated herein, pursuant to which defendants acquired certain rights in the fanciful character "Mr. Magoo." Likewise, on or about November 30, 1955, defendants jointly and severally entered into a written agreement with Enterprises and Columbia modifying and clarifying such agreement, a copy of which modifying and clarifying agreement is attached hereto, marked Exhibit A-1, and by this reference incorporated herein. (Such two agreements will, for convenience be referred to collectively herein as the "License Agreement.")

IV

Defendant Foote, Cone & Belding, Inc. executed the License Agreement in its capacity as agent for and on behalf of defendants Rheingold Brewing Company and Liebmann Breweries, Inc., and each of them; and also in its individual capacity for its own account, and at all times herein mentioned said defendant Foote, Cone & Belding, Inc. was a party to said License Agreement and plaintiffs, and each of them, believed it to be a party to said License Agreement, and plaintiffs are informed and believe and based upon such information and belief allege that said defendant intended to be a party to said License Agreement.

V

The original term of the license under the License Agreement was the period of two years commencing January 1, 1956. Defendants paid to Enterprises and Columbia license fees provided for in the License Agreement for the calendar years 1956 and 1957 in the amount of $60,000 only and defendants and Enterprises and Columbia, and each of them, performed each and all of the covenants and conditions to be performed by them under the License Agreement during said calendar years and each of them.

VI

On or about June 21, 1956, defendants jointly and severally entered into a written agreement (herein called the "Radio and Label Agreement") with Enterprises and Columbia amending and supplementing the License Agreement, a copy of which amendment and supplement is attached hereto, marked Exhibit B, and by this reference incorporated herein.

VII

Defendant Foote, Cone & Belding, Inc. executed the Radio and Label Agreement in its capacity as agent for and on behalf of defendants Rheingold Brewing Company and Liebmann Breweries, Inc., and each of them, and also in its individual capacity for its own account, and at all times herein mentioned said defendant Foote, Cone & Belding, Inc. was a party to said Radio and Label Agreement and plaintiffs, and each of them, believed it to be a party to said Radio and Label Agreement, and plaintiffs are informed and believe and based upon such information and belief allege that said defendant intended to be a party to said Radio and Label Agreement.

VIII

The original term of the license under the Radio and Label Agreement commenced on July 15, 1956 and was co-terminous with the term of the license under the License Agreement. Defendants paid to Enterprises and Columbia the license fee provided for in the Radio and Label Agreement for the period commencing July 15, 1956 and ending July 14, 1957, in the amount of Ten Thousand Dollars ($10,000) only and defendants and Enterprises and Columbia, and each of them, performed each and all of the covenants and conditions to be performed by them under the Radio and Label Agreement during said period. Defendants failed and refused and continue to fail and refuse to pay to Enterprises and Columbia, or either of them, the license fee provided for in the Radio and Label Agreement for the period commencing July 15, 1957 and ending December 31, 1957.

IX

On or about August 20, 1957, Enterprises and Columbia exercised the option granted to them under the License Agreement to extend the term of the license provided for in the License Agreement and in the Radio and Label Agreement for the additional year commencing January 1, 1958, by reason of which extension defendants, and each of them, became obligated to pay Enterprises and Columbia not later than January 31, 1958, the License fee for 1958 of $20,000 under the License Agreement and $10,000 under the Radio and Label Agreement. Defendants, and each of them, failed and refused to pay said license fees or either of them by January 31, 1958 and still fail and refuse to pay said license fees or either of them.

X

Enterprises and Columbia have duly performed all the covenants and conditions on their part to be performed under the License Agreement and under the Radio and Label Agreement.

XI

There is now due and owing from defendants, and each of them, to Columbia and Enterprises license fees provided for in the License Agreement and the Radio and Label Agreement in the aggregate sum of $34,583.33 no part of which has been paid.

CAUSE OF ACTION OF UPA PICTURES, INC.

Plaintiff UPA Pictures, Inc. alleges:

XII

At all times herein mentioned plaintiff UPA Pictures, Inc. (herein called "UPA") was, and now is, a California corporation.

XIII

UPA incorporates herein by reference, and alleges, each and every allegation contained in Paragraph II of this Complaint.

XIV

On or about November 30, 1955, and concurrently with the making of the License Agreement, the defendants jointly and severally entered into a written contract (herein for convenience called the "Production Agreement") with UPA, a copy of which is attached hereto, marked Exhibit C, and by this reference incorporated herein. Pursuant to the Production Agreement, defendants, and each of them, agreed to order from UPA at least eight (8) spot commercials for the year 1956 and at

least six (6) spot commercials for the year 1957, each of which was to feature the fanciful character "Mr. Magoo."

XV.

Defendant Foote, Cone & Belding, Inc. executed the Production Agreement in its capacity as agent for and on behalf of defendants Rheingold Brewing Company and Liebmann Breweries, Inc., and each of them, and also in its individual capacity for its own account, and at all times herein mentioned said defendant Foote, Cone & Belding, Inc. was a party to said Production Agreement and plaintiffs, and each of them, believed it to be a party to said Production Agreement, and plaintiffs are informed and believe and based upon such information and belief allege that said defendant intended to be a party to said Production Agreement.

XVI.

From time to time during the calendar year 1956, in accordance with the provisions of the Production Agreement, defendants ordered from UPA and UPA prepared and delivered to defendants eight (8) spot commercials.

XVII.

Defendants, and each of them, failed and refused to order from UPA any spot commercials for or as respects the year 1957 and they, and each of them, have failed and refused, and still fail and refuse, to pay UPA for such six (6) spot commercials, or any of them, for or as respects the year 1957.

XVIII.

On or about August 20, 1957 Enterprises and Columbia exercised the option granted to them under the License Agreement to extend the term of the license under the

License Agreement for the additional year of 1958. By reason of such extension the term of the production Agreement was likewise extended for the additional year of 1958, whereby defendants, and each of them, became obligated to order at least six (6) spot commercials from UPA during the year 1958.

XIX.

On or about November 26, 1957, defendants, and each of them, notified UPA in writing that neither they, nor any of them, would order or pay for such spot commercials, or any of them, for or as respects the year 1958, purported to terminate the Production Agreement, the License Agreement and the Radio and Label Agreement, and wholly repudiated said agreements and each of them.

XX.

UPA has duly performed all the covenants and conditions on its part to be performed to the date hereof under the Production Agreement, and at all times commencing January 1, 1957 and continuing to the date hereof, UPA has been ready, able and willing to prepare and deliver to defendants, and each of them, any and all of the spot commercials which defendants, and each of them, agreed to order for and as respects the calendar years 1957 and 1958 in accordance with the Production Agreement.

XXI.

UPA could have prepared and delivered to defendants said twelve (12) spot commercials which defendants agreed and were obligated to order from it under the Production Agreement for and as respects the years 1957 and 1958 at and for a total cost to UPA of $48,000, for which defendants agreed to pay to UPA the total sum of $167,400. UPA has thereby sustained damages in the

sum of $119,400 as a result of defendants' repudiation of said agreement and their failure and refusal to order or pay for such twelve (12) spot commercials, or any of them.

Wherefore, plaintiffs pray for judgment against the defendants, and each of them, as follows:

A. In favor of Enterprises and Columb :

1. In the sum of $34,583.33, together with interest thereon at the rate of seven percent (7%) per annum from February 1, 1958;

2. For their costs of suit herein; and

3. For such other relief as the court may deem proper.

B. In favor of UPA:

1. In the sum of $119,400, together with interest thereon at the rate of seven percent (7%) per annum from the date hereof;

2. For its costs of suit herein; and

3. For such other relief as the court may deem proper.

YOUNGMAN, HUNGATE & LEOPOLD
By /s/ RICHARD HUNGATE
Attorneys for Plaintiffs

EXHIBIT A.

November 30, 1955

UPA Enterprises, Inc.
and Columbia Pictures Corporation
Los Angeles, California.

Gentlemen:

Your signature in the space below will confirm the following agreement made between us, on behalf of our client, Rheingold Brewing Company and/or Liebmann Breweries, Inc. (herein called "Client"), and you this date:

A. You represent and warrant that you are the sole owners of all rights in and to the name, character, characterization, voice, likeness and other elements of "Mr. Magoo" (all of which are herein collectively called "Mr. Magoo"), that you have the right to grant to us the rights herein set forth, and that you have not heretofore entered into and will not hereafter enter into any agreements which would impair or interfere with [or diminish the value to us of] the rights herein granted.

B. For good and valuable consideration, receipt whereof is hereby acknowledged, you have heretofore granted to us an option to enter into an agreement with you upon all of the terms and conditions hereinafter set forth, which option was exercisable by us at any time, but not later than 48 hours (exclusive of Saturdays, Sundays and holidays) after the delivery to Client in New York City of the storyboards referred to in the introductory paragraph of the agreement between us and UPA Pictures, Inc. (herein called "UPA") entered into concurrently herewith (herein called "production agreement"). You acknowledge that we have duly exercised the fore-

going option, and, accordingly, the terms and conditions hereinafter set forth apply.

1. You grant to us the exclusive right and license during the term hereof, and for a period of 30 days thereafter with respect to material authorized or released during the term, to use "Mr. Magoo" for the purpose of advertising, publicizing and promoting Client, its products and services, in the territory hereinafter specified, over television only in connection with programs sponsored in whole or in part by Client, and in newspapers (other than comic strips which are specifically excluded herefrom) and display media. (For purposes of clarification, the words "comic strips" shall not be deemed to include cartoons confined to paid advertising space exclusive of comic pages in daily or Sunday papers). The territory covered by this agreement shall be the state of California (including for this purpose, as to television, the California signal area, even though reception may incidentally be had outside the state of California, and as to newspaper and display media, uses made or distributed in California, and also newspapers published in California, even though there may be occasional distribution thereof in other areas).

2. The term hereof (herein referred to as "the term" and sometimes as "the original term") shall commence on January 1, 1956 and shall continue to and including December 31, 1957, each calendar year thereof being referred to herein as a "year of the term." You shall have an option to extend the term for an additional period of one year, commencing on January 1, 1958 (herein called "extended term") by giving us notice in writing of your intention so to do not later than September 30, 1957; provided, however, that if you exercise the option herein granted and we do not desire the term to continue during

the extended term we may nonetheless terminate the term effective as of the expiration of the original term by notice in writing to you not later than 30 days prior to the expiration of the original term, accompanied by payment to you of the amount which would have been payable under paragraph 3 hereof if the extended term had become effective and by payment to UPA Pictures, Inc. of the amount specified in the production agreement.

3. For the rights granted to us hereunder we agree to pay to you the following:

(a) During the original term, the sum of $60,000.00, of which $40,000.00 has been paid to you concurrently herewith, receipt of which is hereby acknowledged, and the balance shall be payable within 30 days after the commencement of the second year of the term.

(b) For the extended term (if the extended term becomes effective as provided in paragraph 2), the sum of $20,000.00, payable within 30 days after the commencement of the extended term.

Payment shall be made jointly and shall be delivered to you and we shall have no obligation to see to the application of the proceeds as between you.

4. The rights granted to us shall be exclusive with respect to beer and beer products only, within the territory, during the term, and you agree not to authorize or permit use of "Mr. Magoo" contrary to the exclusivity provisions herein set forth. You further agree not to authorize or permit the use of "Mr. Magoo" in entertainment films of a character detrimental to the products, name or advertising of Client. (For example, you will not authorize or permit "Mr. Magoo" to appear as a proponent of the WCTU, or to be portrayed so as to lead the public to be-

lieve that he has been drinking immoderately, or as belittling the "Miss Rheingold Contest," or otherwise causing ridicule or embarrassment to Client). You shall not, however, be responsible for any casual or inadvertent failure to comply with the foregoing, or any failure due to acts of third persons beyond your control, but you shall endeavor to correct the same when notified thereof in writing. It is specifically agreed that except as aforesaid, all rights not herein exclusively granted to us are reserved by you and may be exercised freely by you and shall be deemed non-competitive to the rights herein granted.

5. We agree to give credit to UPA and to Columbia Pictures Corporation on all printed material, other than point-of-sale material, in size of type at least 15% of the size of the credit to "Mr. Magoo," which credit shall read, substantially, as follows:

> "See Mr. Magoo at your favorite theatre, Columbia Pictures Corporation-UPA Pictures, Inc. release."

We shall not, however, be responsible for any casual or inadvertent failure to accord you the credit hereinabove specified, or any failure due to acts of third persons beyond our control, but we shall endeavor to correct the same when notified thereof in writing.

6. We agree to affix or cause to be affixed to all copyrightable uses of "Mr. Magoo" a copyright notice in the form hereafter specified or such other form as you may hereafter designate by notice in writing to us. In connection with all copyrightable uses of "Mr. Magoo" which shall consist of works of art, reproductions of works of art, drawings, photographs and pictorial illustrations, including prints or labels used for articles of merchandise, the copyright notice shall be in the following form:

"© United Productions of America." In all other copyrightable uses of "Mr. Magoo" the copyright notice shall be in the form above specified, together with a date, which date shall be the date of first publication of the use involved, unless you notify us in writing that some other date should be used. We understand that United Productions of America is changing its corporate name and when directed by you in writing we will, as to uses of "Mr. Magoo" made thereafter, cause the new name to be inserted in copyright notices in lieu of the name, United Productions of America, in accordance with your instructions. We will cooperate with you in obtaining registration of any claim to copyright with the Register of Copyrights where you so direct, but at your cost.

7. We acknowledge that it is of basic importance to you to maintain "Mr. Magoo" as a unique character of distinctive nature and appeal, and we therefore agree that all uses in film and/or art work with respect to "Mr. Magoo" shall not be detrimental to the character of "Mr. Magoo" and for this purpose shall be subject to approval of UPA, and all films and art work, as well as sound and other incidental material in which we may require in connection with "Mr. Magoo" shall be done by UPA. We shall reimburse UPA for the foregoing UPA standard cost for new art work and at its out-of-pocket costs for sound and other incidental material, provided only that where feasible we may, subject to approval of UPA, use art work taken directly from television films made by UPA pursuant to the production agreement.

8. Any notices which you may desire to give us under this agreement shall be deemed duly given when personally served upon one of our officers or when deposited in the United States mails, postage prepaid, addressed to us at

the address specified below our signature, or at such other address as we may from time to time designate in writing. Any notice which we may desire to give to you under this agreement shall be deemed duly given to each of you when personally served upon an officer of each of you or when duplicate copies of such notice are deposited in the United States Mails, postage prepaid, addressed to each of you at the addresses specified below your signatures, or at such other address as may from time to time be designated in writing. Any notices given as aforesaid shall be deemed duly served upon deposit thereof in the United States mails.

Kindly indicate your approval and acceptance of the foregoing by signing in the space hereinbelow provided.

Very truly yours,

FOOTE, CONE & BELDING, INC.

By FRANK E. DELANO

Address: 900 Wilshire Boulevard
Los Angeles 17, California

APPROVED AND ACCEPTED:

UPA ENTERPRISES, INC.

By STEPHEN BOSUSTOW

Address: 4440 West Lakeside Avenue
Burbank, California

COLUMBIA PICTURES CORPORATION

By .....[Illegible].....
Vice Pres.

Address: 729 Seventh Avenue New York, New York

EXHIBIT A-1

UPA Enterprises, Inc.
and Columbia Pictures Corporarion
Los Angeles, California

Gentlemen:

This will refer to the License Agreement between you and us dated November 30, 1955 licensing the use by Rheingold Brewing Company and/or Liebmann Breweries, Inc. of the character "Mr. Magoo" and also to a related agreement called the Production Agreement between UPA Pictures Inc. and Foote, Cone & Belding, Inc., dated November 30, 1955.

You and we wish to modify and clarify the License Agreement in certain respects as hereinafter set forth and it is therefore agreed as follows:

1. There shall be deleted from the eighth line of Paragraph A of the License Agreement the words "or diminish the value to us of."

2. The television rights in respect of "Mr. Magoo" as set forth in Article 1 of said agreement shall be deemed limited solely to the use of the sixty (60) second commercials provided to be delivered in accordance with the Production Agreement. So much of Article 1 of said agreement which relates to newspaper rights shall be deemed deleted therefrom and in the place and stead thereof, you agree that we shall have the right only to use said character in newspapers as follows: In paid advertising calling attention to the television programs in which the aforesaid commercials appear; in such advertising said character may be used in a single panel cartoon which shall be without continuity, i.e. not telling a story, between prede-

cessor and successive cartoons. In all other respects, said Article 1 remains unchanged.

Kindly indicate your approval and acceptance of the foregoing by signing in the space hereinbelow provided.

Very truly yours,

FOOTE, CONE & BELDING, INC.
By FRANK E. DELANO
Address: 900 Wilshire Boulevard
Los Angeles 17, Calif.

APPROVED AND ACCEPTED:
UPA ENTERPRISES, INC.
By STEPHEN BOSUSTOW
Address: 4440 West Lakeside Avenue
Burbank, California

COLUMBIA PICTURES CORPORATION
By L. JAFFE
Vice Pres.
Address: 729 Seventh Avenue
New York 19, New York

Form approved: DOD; commitment appr'd: ED.

EXHIBIT B.

UPA Pictures, Inc.

June 21, 1956

UPA Enterprises
and Columbia Pictures Corporation
Los Angeles, California

Gentlemen:

Reference is hereby made to that certain agreement, as amended, entered into between you and us on November 30, 1955, hreinafter referred to as the "Licensing Agreement," whereby you granted to us on behalf of our Client, Rheingold Brewing Company and/or Liebmann Breweries, Inc., certain rights in and to your cartoon character "Mister Magoo. You and we now desire to enter into an agreement respecting the use of "Mister Magoo" on beer bottle neck labels or neck wraps and in connection with markings on beer can tops and or bottoms and in connection with radio broadcasting, and do agree as follows:

1. Paragraph 1 of the Licensing Agreement relating to the territory thereof is hereby amended to incorporate the City of Yuma, Arizona, within the territory. No other term or condition of the Licensing Agreement shall be deemed amended or modified by this paragraph.

2. You hereby grant to us the exclusive right and license to use the name and likeness of "Mister Magoo" in connection with neck labels or neck wraps on beer bottles and markings on beer can tops and/or bottoms.

(a) The territory of this license shall be the State of California (including the City of Yuma, Arizona) only.

(b) The term of this license shall commence on July 15, 1956, and shall continue for a period of time concurrently with the term of the Licensing Agreement and sub-

ject to all provisions of the Licensing Agreement relating to the term or extensions thereof.

(c) For the rights granted to us hereunder we agree to pay to you the sum of Five Thousand ($5,000.00) Dollars per year during each year (and pro rata for the portion of the last year of the term prior to the expiration thereof) of the term hereof. It is understood and agreed, however, that in the event you exercise your rights to extend the term of the Licensing Agreement for a third year, and we elect to pay the sum stipulated in paragraph 2 of the Licensing Agreement to terminate the Licensing Agreement, then and in that event, the term of this agreement shall be deemed terminated without further obligation on our part for the rights granted herein as respects said third year.

(d) All artwork required in connection with the exercise of rights granted herein shall be done for us by UPA Pictures, Inc. at their standard studio rate for artwork. It is understood that the charges for designing neck labels or neck wraps on beer bottles and markings on beer can tops and/or bottoms, and preparation of finished artwork for same will not exceed Five Hundred ($500.00) Dollars.

3. It is understood and agreed that, in addition to the rights to use "Mister Magoo" now or heretofore granted to us, we shall have the right to use "Mister Magoo" in radio broadcasting (other than in "network" broadcasting as the term is commonly understood in the industry), subject to the following:

(a) The right granted herein is limited to the use of "Mister Magoo" in commercial announcements, none of which shall exceed sixty (60) seconds in length.

(b) The territory of this license shall be the State of California (including the City of Yuma, Arizona) only.

(c) The term of this license shall commence on July 15, 1956 and shall continue for a period of time concurrently with the term of the License Agreement, and subject to all provisions of the License Agreement relating to the term or extensions thereof.

(d) Any text material which we propose to use in connection with such commercial announcements shall be subject to the prior approval of UPA Pictures, Inc.

(e) We will contract directly with voice actors to be used in connection with the commercial announcements. However, we will not enter into a contract with any voice actor depicting the voice of "Mister Magoo" without UPA Pictures, Inc. approval of such actor first had and obtained. This approval once granted, may be withdrawn at any time if UPA Pictures, Inc. feels the characterization of "Mister Magoo" by such actor might be detrimental to their use of "Mister Magoo."

(f) For the rights granted herein we shall pay you the following:

(i) Five Thousand ($5,000.00) Dollars per year (or pro rata for the portion of the last year of the term prior to the expiration thereof) for the rights granted herein as respects the exercise thereof in the State of California (including the City of Yuma, Arizona) for a term to begin on July 15, 1956 and to continue until the termination of the Licensing Agreement.

(ii) In the event you exercise your right to extend the term of the Licensing Agreement for a third year, and we elect to pay the sum stipulated in paragraph 2

of the Licensing Agreement to terminate the Licensing Agreement then, and in that event, the term of this agreement as respects the rights granted herein, shall be deemed terminated without further obligation on our part as respects said third year.

4. All terms and conditions of the Licensing Agreement not inconsistent with the terms herein set forth, including, but not by way of limitation, the provisions relating to copyright notices, are deemed a part hereof as though fully set forth herein.

Your signatures, together with ours, hereinbelow, will constitute this a binding and enforceable agreement between us.

Very truly yours,

FOOTE, CONE & BELDING, INC.,
By FRANK E. DELANO

ACCEPTED AND AGREED TO:
UPA ENTERPRISES
By S. BOSUSTOW
President

COLUMBIA PICTURES CORPORATION
By JM

[Form approved: DOD; commitment approved: /s/ ED, NU.]

EXHIBIT C.

November 30, 1955.

UPA Pictures, Inc.
4440 Lakeside Drive
Burbank, California

Gentlemen:

Your signature in the space below will confirm the following agreement made between us, on behalf of our client, Rheingold Brewing Company and/or Liebmann Breweries, Inc., (herein called "Client"), and you this date:

You have heretofore prepared and delivered to Client in New York City, 4 finished storyboards of 60 seconds each in length, built around the character "Mr. Magoo"; and we have duly advised you that we desire to proceed with the production of filmed television commercials (herein called "commercials") built around "Mr. Magoo." Accordingly, all of the terms and conditions herein set forth shall apply:

1. The term of this agreement shall commence January 1, 1956 and shall continue for a term which shall run concurrently with the term of an agreement between UPA Enterprises, Inc., Columbia Pictures Corporation and us with respect to the rights in the character "Mr. Magoo" being entered into concurrently herewith (herein called the "license agreement").

2. When preliminarily approved by us, you will prepare and deliver to us in New York finished storyboards which, when submitted, will be 60 seconds each in length, as ordered by us. We shall have a period of 48 hours (exclusive of Saturdays, Sundays and holidays) after delivery of the finished storyboards in New York within which to approve or disapprove of same. If for any rea-

son whatsoever we should reject any finished storyboard pursuant to our right of approval or rejection herein, this agreement, as respects such story board, shall terminate effective with such rejection, in which event it is agreed that the initial progress payment under paragraph 3 hereof shall constitute full and final payment for the work done to date, and the rights in such storyboard shall remain vested in you, provided that you shall not use such storyboard based upon or embodying our material or any similar storyboard, or permit the same to be used by any other person, firm or corporation.

3. If we approve the finished storyboards as submitted or with changes as agreed to, you agree to produce and furnish commercials conforming to said finished storyboards, subject to the provisions hereinafter set forth, and deliver the same and all rights herein provided for to us at a price of $155.00 net per filmed foot, plus the cost of music, if any, for the commercials. The price herein specified shall be payable in installments, as follows:—25% upon order of storyboards; 25% upon approval of finished storyboards; 25% upon approval of rough animation reels; 25% upon delivery of answer prints. You acknowledge that we have paid to you concurrently herewith the sum of $15,000.00 which shall be applied against the price for the first 4 commercials hereunder. The price hereinabove specified shall be subject to increase to the extent that your cost for the commercials is increased by reason of industry-wide increases in any union scale as a result of a collective bargaining agreement, or increases in federal, state, old age, unemployment or disability insurance, taxes or contributions, or increases in contributions or payments required by a labor union or guild for union health, welfare or similar funds, over the amounts presently required

to be paid for any of the foregoing. The price, however, shall not include city or state sales taxes which may be applicable to the commercials or prints thereof delivered hereunder, which applicable taxes we agree to pay.

The foregoing price shall include: your supplying all persons and material necessary for the production of the commercials, including the voice of "Mr. Magoo"; all sessions and unit payments required under the 1955 Producers-Screen Actors Guild Codified Basic Agreement for Filmed Commercials (herein called "SAG agreement"), and any other applicable union agreement; storyboard services, creative photography and recording work and production items; copyright and music clearances; negative (picture and sound) photographed in 35/mm, black and white and 16/mm. reduction negative, of highest technical quality in all respects, complete in all details in first class condition, and all cuts and trims; and delivery of one 16/mm and one 35/mm release prints in black and white, in first class condition (herein called "the required prints"). If we notify you at the time of placing our order that we desire these commercials to be filmed in color and the required prints to be color prints, you will deliver the same at an increase in price of 20% over the price hereinabove specified.

We will pay all use fees required under the SAG agreement at scale.

4. During the first year of the term, we agree to order at least eight 60 seconds commercials. During the second year of the term, we agree to order at least six 60 seconds commercials. If the term of the license agreement is continued for the extended term (as the same is defined in the license agreement), we agree to order

at least six 60 seconds commercials during the extended term. If, however, you exercise your option for the extended term and nonetheless, we elect to terminate the term of the license agreement and of this agreement at the end of the original term, in lieu of our obligation under the preceding sentence, we agree to pay to you the sum of $30,000.

Answer prints (35/mm, black and white) for the commercials will be delivered by you on the following schedule:—Where several finished storyboards are approved as a group, the answer print for the first commercial based on one of such finished storyboards shall be delivered not later than ten weeks after approval of the storyboard therefor, and answer prints for the other commercials based on the storyboards approved as a group will be delivered not later than at three-week intervals thereafter. You will use your best efforts to process and deliver release prints for the commercials as quickly as possible after approval of answer prints. You acknowledge that 4 finished storyboards have been approved by us and will deliver the answer prints therefor in accordance with the above schedule.

5. You will, so long as we permit you to retain possession of the negatives of the commercials, store the same in a fireproof vault at your expense, and strike off as many prints thereof as we request in writing from time to time and skip such prints in accordance with our instructions at a cost to us which will not exceed $10.35 for each 16/mm or 35/mm print, less usual quantity discounts, in addition to your reasonable out-of-pocket, direct costs in connection with such shipping, which costs must be billed to us by you in quadruplicate, accompanied by way bills.

6. In no event will you proceed with principal photography of the commercials until all basic production conditions have been approved by us. The rough animation reels and answer prints shall be exhibited to us and be subject to our written approval as to conformity to storyboards. In the event of any delay in our approval or disapproval of finished storyboards, rough animation reels or final answer prints, any additional costs occasioned thereby, including standby charges, will be charged to us.

You warrant that you will, prior to commencement of production of the commercials, secure and maintain at all times during such production, at your expense, adequate public liability insurance covering injury to persons or damage to property arising out of such production, with us and Client being covered as insured, and that you will, from commencement of production of the commercials and thereafter, so long as the negatives remain in your possession, keep the same fully insured against fire, theft and other loss customarily included in extended insurance coverage, at your expense, including us and Client as insureds.

7. You represent and warrant that:

(a) Subject to the provisions of the license agreement, you are qualified to perform as required hereunder, there are no agreements preventing you from fulfilling this agreement, and the commercials and the material therein or otherwise supplied by you hereunder will not infringe upon or violate the legal rights of others, and particularly will not violate or infringe any trade marks, copyright, right of privacy of, or libel or slander, any party or be subject to any claim of lien or unpaid compensation, or be subject to any other

matter or thing whatsoever which will in any way interfere with or diminish the use by, or the value to, us or Client, of the commercials, or the material supplied by you hereunder or the ownership thereof; our rights to use the commercials, sound track thereof and drawings and characters created by you and depicted in the commercials shall be limited by and co-extensive with the provisions of the license agreement.

Subject to your ownership of "Mr. Magoo" and to our rights to use the same only in accordance with the provisions of the license agreement, we will be the sole, exclusive and unlimited owner of the commercials (including all negatives and prints thereof, and the original and conformed sound tracks), and all material therein, including the original storyboards and all material supplied by you hereunder (whether or not incorporated in the commercials, and of all rights in connection therewith, including, but not limited to, the right to copyright the commercials and the material.

(b) Subject to our obligation under the last sentence of paragraph 3 hereof, the commercials will be clear and free of all claims and encumbrances of any kind whatsoever, and will contain such union seals, labels and clearances required for exhibition or telecasting of the films by us to the public, and be produced by you in compliance with all rules and regulations of unions having competent jurisdiction over persons rendering services in connection with production of the commercials.

(c) All reports, contributions, payments and taxes to be made and paid with respect to the persons, materials or facilities furnished by you in connec-

tion with the commercials, including, but not limited to, income taxes, withholding taxes, social security, unemployment insurance, old age pensions, workmen's compensation legislation or other and similar legislation, whether now in force and effect or hereafter enacted, will be made by you, and you will observe all requirements imposed by law upon employers. All contracts entered into by you hereunder, whether contracts of employment or otherwise, will be entered into by you as principal and you will not be deemed to be acting as our or the Client's agent in negotiating or entering into such contracts.

(d) You will procure from the players and standard form written contract required by the SAG agreement completely filled out and containing a specific provision that compensation in excess of the minimum amounts provided for in the SAG agreement paid to a player for his services in making the commercials or for any use or period of use thereof may be credited by you or us or Client against any use fees payable to such player. You will deliver to us concurrently with the delivery of the required prints a copy of each such contract, together with (i) schedule showing the gross amount paid by you to such player for his services in making the commercials and the portion in excess of the minimum amounts provided for in the SAG agreement, and (ii) two completely filled in and signed W-4 forms for the player (on which the marital status of each player is indicated).

You agree to indemnify and hold us and Client, and our and their directors, officers, employees and other

persons connected with the commercials, and all television networks and the individual stations over the facilities of which the commercials are broadcast, free and harmless of and from any and all liabilities from claims, demands and actions, including attorney's fees incurred based upon any violation or alleged violation of the foregoing representations and warranties or arising out of the production, television broadcast or other use of the commercials under this agreement. The foregoing warranties shall not be deemed to apply to material supplied by us or Client, nor to any claim for compensation of persons supplied by us or Client, and as to any of the foregoing supplied by us or Client, we make similar warranties to you and agree to indemnify you with respect thereto to the same extent that you have agreed to indemnify us and Client under the preceding portions of this paragraph 7.

8. In the event that you are unable to use Jim Backus as the voice of "Mr. Magoo" due to the death or disability of said Jim Backus, or for any other reason whatsoever, you will supply a suitable substitute, subject to our reasonable approval; provided, however, that in the event of disapproval as to such substitute, your decision shall be final.

Your screen trade mark may appear on the commercials; provided, however, that the same is not included in the portion of the commercials which is telecast.

9. You are producing the commercials as an independent contractor and not as our or the Client's agent or employee. Notwithstanding anything to the contrary here-

under, neither we nor the Client will have any right to control or direct the details, means, manner or method of performance of your obligation hereunder. No waiver by us of any breach of this agreement shall be deemed to be a waiver of any other provision of this agreement. Neither we nor the Client is obligated to use the commercials; our, and the Client's only obligation being to pay the price as and when required hereunder. We may assign our rights hereunder, or any part thereof, to any reputable person, firm or corporation who may be designated by Client as its agents in our place and stead. This agreement shall be construed as an agreement executed and to be performed in the State of California.

10. Any notice which we may desire to give you under this agreement shall be deemed given when personally served upon one of your officers or when deposited in a receptacle provided for under the postal laws of the United States, postage prepaid, addressed to you at the address which appears first above. The date of deposit of any notice so addressed in the United States mail shall be deemed the date of service thereof.

Very truly yours,

FOOTE, CONE & BELDING, INC.

By FRANK E. DELANO

APPROVED AND ACCEPTED:

UPA PICTURES, INC.

By STEPHEN BOSUSTOW

State of California County of Los Angeles,—ss.

Stephen Bosustow being by me first sworn, deposes and says: that he is the President of UPA Pictures, Inc., a corporation, and UPA Enterprises, a corporation, who are plaintiffs in the above entitled action; that he has read the foregoing Amended Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon.....information or belief, and as to those matters he believes it to be true.

/s/ STEPHEN BOSTUSTOW,
STEPHEN BOSTUSTOW

Received copy of the within Amended Complaint this 11th day of June 1958

.....

Attorneys for Defendants

Exhibit B.

Youngman, Hungate & Leopold
Richard Hungate, Glenn Warner
6505 Wilshire Boulevard
Los Angeles 48, California
OLive 3-0490
Attorneys for Plaintiffs

In the Superior Court of the State of California in and for the County of Los Angeles.

UPA Pictures, Inc., UPA Enterprises and Columbia Pictures Corporation, Plaintiffs, vs. Foote, Cone & Belding, Inc., Liebmann Breweries, Inc., and Rheingold Brewing Company, Defendants. No. 698923.

ORDER FOR SERVICE OF PROCESS UPON SECRETARY OF STATE

Upon reading and filing the Declaration of Richard Hungate, and it satisfactorily appearing therefrom to me that the defendant Liebmann Breweries, Inc. is a foreign corporation with a place of business at 36 Forrest Street, Brooklyn 6, New York, and that said defendant has not filed with the Secretary of State of California any part of the statement required by Section 6403 of the Corporations Code or any designation of an agent for service of process, and it further appearing that diligent effort and search have indicated that neither any office nor any officer of said defendant can be found in this State on which or upon whom service of process might be made,

NOW, THEREFORE, IT IS HEREBY ORDERED that service of process in the above entitled action upon defendant

Liebmann Breweries, Inc. be made by personal delivery of a copy of the summons and complaint therein, together with one copy of this Order, to the Secretary of State or to an assistant or deputy secretary of state, and that such process and Order then be sent by the Secretary of State to said defendant Liebmann Breweries, Inc. at its business address at 36 Forrest Street, Brooklyn 6, New York.

DATED this 28th day of November, 1958.

A. EDWARD NICHOLS
Court Commissioner
Los Angeles County
Judge of the Superior Court

Exhibit C.

Coyle and Cooper
742 South Hill Street
Los Angeles 14, California
MAdison 7-9077
Attorneys for Defendant Liebmann Breweries, Inc.

In the Superior Court of the State of California in and for the County of Los Angeles.

UPA Pictures, Inc., UPA Enterprises and Columbia Pictures Corporation, Plaintiffs, vs. Foote, Cone & Belding, Inc., Liebmann Breweries, Inc., and Rheingold Brewing Company, Defendants. No. 698923.

STIPULATION EXTENDING TIME WITHIN WHICH TO MOVE TO QUASH SERVICE OF SUMMONS AND ORDER EXTENDING TIME WITHIN WHICH TO MOVE TO QUASH SERVICE OF SUMMONS (Code of Civil Procedure, Section 416.1)

IT IS HEREBY STIPULATED by and between the Plaintiffs, by and through their counsel, Youngman, Hungate & Leopold, Richard Hungate and Glenn Warner, and the Defendant Liebmann Breweries, Inc., appearing specially only by and through its counsel, Coyle and Cooper, as follows:

1. That this Stipulation shall not constitute a general appearance by the Defendant Liebmann Breweries, Inc. in the above entitled action, but only a special appearance in connection with the making of the Motion described herein;

2. That the time within which the Defendant Liebmann Breweries, Inc. may serve and file a Notice of Motion to

Quash the Service of Summons upon it, upon the ground of lack of jurisdiction of the above named Honorable Court under it, shall be until January 23, 1959;

3. This Stipulation may, but need not be filed in Court.

DATED: Jan. 2, 1959.

YOUNGMAN, HUNGATE & LEOPOLD,
RICHARD HUNGATE and GLENN WARNER
By /s/ RICHARD HUNGATE
Attorneys for Plaintiffs

COYLE and COOPER
By /s/ LEON M. COOPER
Attorneys for Defendant Liebmann Breweries, Inc.

GOOD CAUSE APPEARING THEREFORE, IT IS ORDERED that the Defendant Liebmann Breweries, Inc., appearing specially only for the purpose of the Motion described in the above Stipulation, and without submitting itself to the jurisdiction of this Court, shall have until January 23, 1959 within which to serve and file its Notice of Motion to Quash the Service of Summons upon the Defendant Liebmann Breweries, Inc. upon the ground of lack of jurisdiction of this Court over it.

DATED: Jan. 5, 1959.

JOSEPH G. GORMAN
Court Commissioner
Los Angeles County
Judge of the Superior Court

Original of this document filed Jan. 5, 1959 in the Office of County Clerk Los Angeles.

Exhibit D.

Coyle and Cooper
732 South Hill Street
Los Angeles 14, California
MAdison 7-9077
Attorneys for Defendant Liebmann
Breweries, Inc.

In the Superior Court of the State of California in and for the County of Los Angeles.

UPA Pictures, Inc., UPA Enterprises and Columbia Pictures Corporation, Plaintiffs, vs. Foote, Cone & Belding, Inc., Liebmann Breweries, Inc., and Rheingold Brewing Company, Defendants. No. 698923.

NOTICE OF MOTION TO QUASH SERVICE OF SUMMONS UPON LIEBMANN BREWERIES, INC.

To Plaintiffs UPA Pictures, Inc., UPA Enterprises and Columbia Pictures Corporation, and to Youngman, Hungate & Leopold, Richard Hungate and Glenn Warner, their attorneys:

PLEASE TAKE NOTICE that on Friday, January 30, 1958, at 9:00 o'clock A.M. of said day, or as soon thereafter as counsel may be heard, in the Courtroom of Department 67, in the New County Courthouse, 111 North Hill Street, City of Los Angeles, State of California, the Defendant Liebmann Breweries, Inc., by Coyle and Cooper, its attorneys, appearing specially for the purposes of this Motion only, and without submitting itself to the jurisdiction of the above named Honorable Court, and for no other purpose, will move the above named Honorable Court:

1. To vacate and set aside its Order for service of process in the above entitled action upon the Defendant Liebmann Breweries, Inc. by service of a copy of the Sum-

mons and Complaint in the above entitled action, together with a copy of the said Order on the Secretary of State of the State of California, and sending of such process and Order by the said Secretary of State to the said Defendant at its business address, 36 Forrest Street, Brooklyn 6, New York; and

2. That the alleged service of Summons upon Liebmann Breweries, Inc. in the above entitled action be quashed, annulled, and set aside.

The foregoing Motion will be made on the grounds that Liebmann Breweries, Inc. is organized under and by virtue of the laws of the State of New York; that it never has and does not now transact any corporate or other business within the State of California; that it does not maintain any agent, officer or other person in the State of California upon whom service of Summons can be made; that said alleged service in this action was attempted to be made by serving a copy of the original thereof upon the Secretary of State of the State of California, which is not authorized by Liebmann Breweries, Inc. to accept the service of process for or on its behalf.

Said Motion will be made and based upon this Notice, the Affidavit of Walter H. Liebmann in Support of this Motion, Points and Authorities in Support of this Motion and the records and files in the above entitled case, and any other affidavits, declarations or documents which may be filed in this case prior to the hearing of said Motion.

DATED: January 22nd, 1959.

COYLE and COOPER

By /s/ LEON M. COOPER

LEON M. COOPER

Attorneys for Defendant

Liebmann Breweries, Inc.

Exhibit E.

Coyle and Cooper
742 South Hill Street
Los Angeles 14, California
MAdison 7-9077
Attorneys for Defendants

In the Superior Court of the State of California in and for the County of Los Angeles.

UPA Pictures, Inc., UPA Enterprises and Columbia Pictures Corporation, Plaintiffs, vs. Foote, Cone & Belding, Inc., Liebmann Breweries, Inc., and Rheingold Brewing Company, Defendants. No. 698923.

AFFIDAVIT OF WALTER H. LIEBMAN IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS

State of New York, County of New York—ss.

Comes now Walter H Liebman and having been duly sworn, deposes and says:

1. That he is Vice President and General Counsel of Liebmann Breweries, Inc., a New York corporation;

2. That on or about December 15, 1958, he received a letter dated December 10, 1958 from the Secretary of State of the State of California addressed to Liebmann Breweries, Inc., advising that on or about December 9th, 1958 copies of a Summons on Amended Complaint and Amended Complaint and an Order for Service and Process upon the Secretary of State in the above entitled action were delivered to the Secretary of State of the State of California for the purported purpose of serving Liebmann Breweries, Inc. That thereafter he communicated with Mr. Leon M. Cooper of the firm of Coyle and Cooper attorneys licensed to practice law in the State of Cali-

fornia, to represent Liebmann Breweries, Inc. in order to appear specially for the purpose of making a Motion to Quash the Service of Summons in the above entitled action, as aforesaid;

3. That he makes this Affidavit in support of said Motion to Quash Service of Summons on Liebmann Breweries, Inc.;

4. That Liebmann Breweries, Inc. is a corporation organized under the laws of the State of New York; that the location of its principal office is 36 Forrest Street, Brooklyn 6, New York; that its officers and directors reside either in the State of New York or close to the New York Metropolitan Area and outside of the State of California;

5. That the corporate affairs connected with Liebmann Breweries, Inc. are conducted at its principal place of business, 36 Forrest Street, City of Brooklyn, State of New York;

6. That the business of Liebmann Breweries, Inc. is brewing and selling beer and selling the by-products from the manufacture of beer; that this business is carried on principally in the State of New York; that none of the business of Liebmann Breweries, Inc. is carried on, or ever has been carried on, in the State of California;

7. That in order to carry on its business, it is necessary for Liebmann Breweries, Inc. to obtain permits and licenses from the authorities supervising the sale of alcoholic beverages in the various states in which it does business; that Liebmann Breweries, Inc. has obtained such licenses

and permits from the authorities concerned in the State of New York; that Liebmann Breweries, Inc. does not now, nor has it ever held a license to manufacture or sell or import beer or other alcoholic beverages in or into the State of California;

8. Liebmann Breweries, Inc. has never advertised its beer or any of its beer products for sale in the State of California; Liebmann Breweries, Inc. has never solicited or offered its beer or any of its beer products for sale in the State of California; Liebmann Breweries, Inc. has never distributed its products in the State of California;

9. Liebmann Breweries, Inc. has never maintained an office or place of business in California, nor has it ever owned an inventory or maintained a warehouse in California;

10. Liebmann Breweries, Inc. has never filed its Articles of Incorporation with the Secretary of State of the State of California or with the County Clerk of any county in the State of California; Liebmann Breweries, Inc. has never filed with the Secretary of State in the State of California any statement in the manner and form of California Corporations Code, Section 6403; Liebmann Breweries, Inc. has never designated an agent for the service of process in the State of California; Liebmann Breweries, Inc. has never located any office for doing business within the State of California; Liebmann Breweries, Inc. has never designated by any means whatsoever any agent in the State of California upon whom process, directed to Liebmann Breweries, Inc., may be served.

11. Liebmann Breweries, Inc. has never entered into any contract with the Plaintiffs, or any of them, in the above entitled action for the licensing of Liebmann Breweries, Inc. for the use of the fanciful character named "Mr. Magoo" in television spot commercials or otherwise for the purpose of advertising the sale of Rheingold Beer in the State of California;

12. Liebmann Breweries, Inc. has never entered into a contract with the Plaintiffs in the above entitled action, or any of them, for production by the Plaintiffs, or any of them, of television spot commercials;

13. Foote, Cone & Belding, Inc. has never been the agent for, or on behalf of, nor has it ever had any authority to act for or on behalf of Liebmann Breweries, Inc. in connection with the production of television spot commercials for the sale of Rheingold beer in the State of California, or for the purpose of distributing television spot commercials throughout the State of California, or for the purpose of promoting the sale of Rheingold beer in the State of California.

14. Liebmann Breweries, Inc. has never paid corporate, franchise, or sales or use taxes, or real or personal property taxes in or to the State of California, or any of its governmental subdivisions.

15. Liebmann Breweries, Inc. has never engaged in business in California in any manner; nor has it ever in California engaged in the business of supervising the production of television spot commercials, nor has it ever engaged in California in the business of distributing tele-

vision spot commercials throughout California, nor has it ever engaged in California in the business of causing said television commercials to be viewed by the public in the State of California for the purpose of promoting the sale of Rheingold Beer in the State of California;

16. Liebmann Breweries, Inc. is not now doing business nor, has it ever done business, in the State of California;

17. By reason of all of the foregoing Liebmann Breweries, Inc. should not be amenable to the service of process within the State of California in the above entitled litigation, pursuant to the provisions of California Corporations Code, Sections 6501 to 6503.

WHEREFORE, your affiant prays that the Motion of Liebmann Breweries, Inc. to quash service of Summons in the above entitled action be granted.

/s/ WALTER H. LIEBMAN
WALTER H. LIEBMAN

Subscribed and sworn to before me this 5th day of January, 1959.

/s/ FRANCES McNALLY
Notary Public in and for said
County and State

State of California, County of Los Angeles,—ss.

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 742 South Hill Street, Los Angeles 14, California On the 22nd day of January, 1959, I served the within Affidavit of Walter H. Liebman in Support of Motion to Quash Service of Summons on the Plaintiffs in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States post office mail box at Los Angeles, California addressed as follows:

Youngman, Hungate & Leopold
6505 Wilshire Boulevard
Los Angeles 48, California

I certify (or declare), under penalty of perjury,* that the foregoing is true and correct.

Executed on January 22, 1959 at Los Angeles, California.

/s/ TERESA WEEKS

*Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.

Exhibit F.

Coyle and Cooper
742 South Hill Street
Los Angeles 14, California
MAdison 7-9077
Attorneys for Defendants

In the Superior Court of the State of California in and for the County of Los Angeles.

UPA Pictures, Inc., UPA Enterprise and Columbia Pictures Corporation, Plaintiffs, vs. Foote, Cone & Belding, Inc., Liebmann Breweries, Inc. and Rheingold Brewing Company, Defendants. No. 698923.

SUPPLEMENTAL AFFIDAVIT OF WALTER H. LIEBMAN IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS

State of New York, County of New York,—ss.

COMES NOW WALTER H. LIEBMAN, and having been duly sworn, deposes and says:

1. That he makes this Supplemental Affidavit in order to set forth facts in addition to those set forth in his Affidavit in Support of Motion to Quash Service of Summons.

2. That in the City and State of New York, during September, 1955, there were discussions by and between representatives of Liebmann Breweries, Inc. and representatives of United Productions of America for the production of television spot commercials for the use of Liebmann Breweries, Inc. in the New York Television Signal Area; that such discussions continued during the months of October and November of 1955, and drafts of

the proposed contracts were prepared. That attached hereto as Exhibits 1 and 2 hereto and incorporated by reference herein are drafts of the said proposed contracts. At one time in November of 1955, Liebmann Breweries, Inc. sought United Productions of America to agree to produce television spot commercials for Liebmann Breweries, Inc. for the sale of its products in an Eastern territory, which included the metropolitan New York area, New Jersey, the eastern half of Pennsylvania, and the New England Television Signal Area.

3. At the same time, Rheingold Brewing Company, a California corporation, and a separate corporation from Liebmann Breweries, Inc. was negotiating for the production by United Productions of America of television spot commercials to be used in the California area.

4. The original drafts of the proposed agreements included both corporations, and contained proposed terms allowing the distribution of the commercials for Rheingold in the California area, and for Liebmann Breweries, Inc. in the Eastern territory.

5. Subsequently, upon the execution of the written agreement by and between UPA Enterprises Inc., Columbia Pictures Corporation, UPA Pictures Inc., and Foote, Cone & Belding, Inc., the advertising agency for Rheingold Brewing Company, the permissible territory for distribution of the commercials was limited to the State of California, including the California Television Signal Area. All references to distribution for use of the commercials in the Eastern area was eliminated from the final draft of the Agreement which was executed. Through an inadvertence the name of Liebmann Breweries, Inc. was not omitted from the introductory clause of the letter agreements.

6. Subsequently, early in June, 1956, further discussions and negotiations were undertaken by representatives of Liebmann Breweries, Inc. and representatives of United Productions of America for the right to use television films of Mr. Magoo for commercial purposes in the New York area to advertise the products of Liebmann Breweries, Inc. Attached hereto as Exhibits 3, 4, and 5, and incorporated by reference herein as though set forth in full hereat are drafts of said proposed agreements. The said proposed agreements were never executed. However, when Exhibit B to the amended Complaint herein was executed and limited to the area of California, including the City of Yuma, Arizona, through an inadvertence the name Liebmann Breweries, Inc. was not omitted from the said Exhibit B to the said amended Complaint.

7. Liebmann Breweries, Inc. did not, nor did any person, firm or corporation on its behalf, enter into any contract, nor did it execute or deliver any contract with the Plaintiffs in this case in any manner whatsoever for any purposes whatsoever.

8. The said Liebmann Breweries, Inc. has not at any time from 1953 to the present date, and does not now, manufacture or sell beer or any products whatsoever, either in the State of California or in the State of Arizona. Liebmann Breweries, Inc. has not at any time from 1953 to the present date, and does not now, advertise the sale of, nor solicit the purchase of any products whatsoever, either in the State of California or in the State of Arizona. Liebmann Breweries, Inc. has not at any time from 1953 to the present date, and does not now, have any agent for the manufacture or sale or solicitation for sale of any products whatsoever in the State of California or in the State of Arizona. By

reason of the foregoing, Liebmann Breweries, Inc. has had no reason, from 1953 to the present, and does not now have any reason for the licensing of commercial advertising cartoon characters or the production of commercial television films to advertise the sale of any products in the State of California or in the State of Arizona.

9. By reason of the foregoing, the agreements for the production of television commercial films and the licensing of the fanciful cartoon characters for use and distribution in the State of California, and Yuma, Arizona (Exhibits A, A-1, B and C to the Amended Complaint in this case) could not be meant to apply to Liebmann Breweries, Inc.

10. Liebmann Breweries, Inc. does not do business in California and has never done business in California. At no time from 1953 to the present, nor does it now, pay taxes in California. At no time from 1953 to the present, nor does it now have a license to manufacture or sell or import beer or any alcoholic beverage in or into the State of California.

11. Rheingold Brewing Company, a separate Defendant in this action, is and at all times has been a separate corporate entity from Liebmann Breweries, Inc. Rheingold Brewing Company was originally incorporated in the State of California on June 2, 1933, under the name of Rex Brewing Company. Thereafter, on July 23, 1933, its name was changed to California Brewing Association of Southern California. Subsequently, on March 29, 1935, its name was changed to Acme Brewing Co. On March 9, 1954, the corporate name was changed to Rheingold Brewing Company, Los Angeles, Subsidiary of Liebmann Breweries, Inc., N.Y. Prior to that time the corporation had prominently carried on in the State of California

the business of manufacturing, distributing and selling beer. In 1954 corporations owning substantially all of the stock of what was then Acme Brewing Co. sold their stock. The result of the sale was that a majority of the stock of the corporations owning stock in Acme Brewing Co. was held by Continental Holding Corporation, a California corporation, the stock of which in turn was owned Five-Sixths (5/6) by Liebmann Breweries, Inc., a New York corporation, and One-Sixth (1/6) by Bohemian Distributing Company, a California corporation. The shareholders of Bohemian Distributing Company do not own any shares of Liebmann Breweries, Inc.; nor do any of the shareholders of Liebmann Breweries, Inc. own any of the shares of Bohemian Distributing Company.

12. The existence of Rheingold Brewing Company under its former corporate names antedates by Eleven (11) years the purchase by Liebmann Breweries, Inc., of any interest in any corporation which owned stock in corporations owning stock in Rheingold Brewing Company. Rheingold Brewing Company was not, therefore, created, nor does it exist, nor has it ever existed as a means or device for Liebmann Breweries, Inc. to do business in the State of California. It was and is a separate corporation.

13. Rheingold Brewing Company was and is a separate corporation from Liebmann Breweries, Inc. and had and has its own shareholders, its own officers and its own directors. It had and has its own corporate officers, maintains its own bank accounts and its own books and records. The sales and purchases of its products and properties were and are carried on by it and its own employees. It has conducted and does conduct its business

in all respects separately and apart from Liebmann Breweries, Inc; Liebmann Breweries, Inc does not nor did it sell any of its own products or any of the products of Rheingold Brewing Company in California or Arizona, nor does it nor did it carry on any of the corporation or business activities of or for Rheingold Brewing Co.

14. Liebmann Breweries, Inc. has never entered into any agreements with either UPA Pictures Inc. or UPA Enterprises or United Productions of America or Columbia Pictures Corporation for distribution of television commercials in the State of California, or for the use or licensing of any cartoon characters in the State of California. Neither Liebmann Breweries, Inc. nor Foote, Cone & Belding, Inc., on behalf of Liebmann Breweries, Inc., entered into the written agreements attached as Exhibits A or A-1 or B or C to the Amended Complaint of the Plaintiffs in the above entitled action.

Wherefore, your affiant prays that the Motion of Liebmann Breweries, Inc. to quash service of Summons in the above entitled action be granted.

/s/ Walter H. Liebman
Walter H. Liebman

Subscribed and sworn to before
me this 16 day of March, 1959

/s/ Frances McNally
Notary Public in and for
said County and State

EXHIBIT 1

UPA Pictures, Inc.
4440 Lakeside Drive
Burbank, California

Gentlemen:

Your signature in the space below will confirm the following agreement made between us, on behalf of our client, Rheingold Brewing Company and/or Liebmann Breweries, Inc. (herein called "Client"), and you this date:

A. You have commenced and are proceeding diligently to make presentations of rough storyboards built around the character "Mr. Magoo" of 60 seconds each in length. When preliminarily approved by us you will prepare 4 complete finished storyboards of 60 seconds each in length which will be presented to Client in New York City. We shall have a period of 48 hours (exclusive of Saturdays, Sundays and holidays) after the delivery of the storyboards to Client in New York City within which to notify you whether or not we desire to proceed with the production of television spots (herein called "spots") upon all of the terms and conditions hereinafter set forth. If we do not advise you of our desire to proceed with the production of spots, as herein provided, the term of this agreement shall terminate 48 hours after delivery of the storyboards to Client; we shall have no further right, title, claim or interest in the storyboards or the material thereof; and we shall pay you the sum of $10,000.00 for your services in connection with the storyboards.

B. If we notify you within 48 hours (exclusive of Saturdays, Sundays and holidays) after delivery of the storyboards to Client in New York City that we desire to

produce spots, the following terms and conditions shall apply:

1. The term of this agreement shall commence January 1, 1956 and shall continue for a term which shall run concurrently with the term of an agreement between you, Columbia Pictures Corporation and us with respect to the rights in the character "Mr. Magoo" being entered into concurrently herewith (herein called the "license agreement").

2. You agree to produce and furnish spots as ordered by us, but subject to the provisions hereinafter set forth, and deliver the same and all rights herein provided for to us at a price of $182.35 per filmed foot with respect to 60 second spots, and $205.88 per filmed foot with respect to 20 second spots, plus 117.65% of the cost of music, if any, for the spots. The price as aforesaid includes our agency commission of 15%, which agency commission you authorize us to deduct and withhold from our payment to you. The price herein specified shall be payable in installments as specified: 25% upon order of storyboards; 25% upon approval of completed storyboards; 25% upon approval of animation; 25% upon delivery of required prints. The price hereinabove specified shall be subject to increase to the extent that your cost for the spots is increased by reason of industry-wide increases in any union scale as a result of a collective bargaining agreement, or increases in federal, state, old age, unemployment or disability, insurance, taxes or contributions, or increases in contributions or payments required by a labor union or guild for union health, welfare or similar funds, over the amounts presently required to be paid for any of the foregoing, plus our 15% agency commission which you authorize us to deduct and withhold from our payment to you.

The foregoing price shall include: your supplying all persons and material necessary for the production of the spots, including the voice of Jim Backus as "Mr. Magoo"; all session and unit payments required under the 1955 Producers-Screen Actors Guild Codified Basic Agreement for Filmed Commercials (herein called "SAG agreement") and any other applicable union agreement; storyboard services, creative, photography and recording work and production items; copyright and music clearances; city and state sales taxes; negative (picture and sound) photographed in 35 mm, black and white, of highest technical quality in all respects, complete in all details, in first class condition, and all cuts and trims; and delivery of one 16 mm and one 35 mm release prints in black and white, in first class condition (herein called "the required prints"). If we desire these spots to be filmed in color and the required prints to be color prints, you will deliver the same at an increase in price of 20% over the price hereinabove specified.

We will pay all use fees required under the SAG agreement at scale.

3. If we use any of the storyboards delivered under paragraph A. hereof in the production of spots, no charge will be made for the storyboards.

4. During the first year of the term, we agree to order an aggregate of 8 minutes of spots. During the second year of the term, and similarly, during the third year of the term (if the term continues during such periods), we agree to order an aggregate of 6 minutes of spots.

The spots will be delivered by you not later than 10 weeks after we have approved the storyboard therefor. We agree to give you at least 12 weeks notice with re-

spect to the first air date for each spot. You acknowledge that we have advised you that the first air date for the spots will be January 15, 1956.

5. You will, so long as we permit you to retain possession of the negatives of the spots, store the same in a fireproof vault at your expense, and strike off as many prints thereof as we request in writing from time to time and ship such prints in accordance with our instructions at a cost to us which will not exceed per 16/mm:..... per 35/mm..... (including 15% thereof as agency commission payable from you to us which you authorize us to withhold and pay to ourselves) in addition to your reasonable out-of-pocket, direct costs in connection with such shipping, which costs must be billed to us by you in quadruplicate, accompanied by ways bills.

6. You will consult with our representative during, and permit him to supervise, photography of the spots, which representative may make suggestions solely as to the results to be accomplished and you will accept such suggestions. In no event will you proceed with principal photography of the spots until all basic production conditions have been approved by us. The work prints and final prints shall be exhibited to us and be subject to our written approval. No change in the script of the spots will be made by you unless expressly requested by us in writing, and when so requested will be made by you without an increase of price unless you notify us in writing within 48 hours (Saturdays, Sundays and holidays excluded) of the amount of any such increase after our delivery to you of such request. If we do not approve such increase in writing by notice to you within 48 hours (Saturdays, Sundays and holidays excluded) after your

written notice, our request shall be deemed withdrawn. The provisions of the next preceding sentence may not be waived by us and we will not be stopped, regardless of our conduct and that of the Client, from asserting the same if we or the Client orally request changes in the script or spots.

You will, prior to commencement of production of the spots, secure and maintain at all times during such production, at your expense, adequate public liability insurance covering injury to persons or damage to property arising out of such production, with us and the Client being covered as insureds.

You will, from commencement of production of the spots and thereafter so long as the negatives remain in your possession, keep the same fully insured against fire, theft and other loss customarily included in extended insurance coverage, at your expense, including us and the Client as insureds. You will deliver a certificate of such insurance and that referred to in the preceding paragraph to us prior to commencement of photography of the spots.

7. You represent and warrant that:

(a) Subject to the provisions of the license agreement, you are qualified to perform as required hereunder, there are no agreements preventing you from fulfilling this agreement and the spots and the material therein or otherwise supplied by you hereunder will not infringe upon or violate the legal rights of others and particularly will not violate or infringe any trade-marks, copyright, right of privacy of, or libel or slander, any party or be subject to any claim of lien or unpaid compensation, or be subject to any other matter or thing whatsoever which will in any

way interfere with or diminish the use by, or the value to, us or the Client, of the spots, or the material supplied by you hereunder or the ownership thereof. Subject further to the provisions of the license agreement, we shall during the terms have the full and exclusive rights to exhibit and transmit the film by means of television broadcasting in the California and Eastern television signal areas (including for this purpose, as to radio and television, Metropolitan New York area, New Jersey, the Eastern half of Pennsylvania and New England signal areas). All rights to the use of the films the sound track, the drawings and characters created by you and depicted in the film may be used by us during the term in radio and space media (including, but not limited to, magazines, newspages in daily or Sunday papers and comic printed publications, other than comic strips which are specifically excluded herefrom. For purposes of clarification the words comic strips shall not be deemed to include cartoons confined to paid advertising space exclusive of comic pages in daily or Sunday papers and comic books.) The foregoing, however, is subject to your approval of the use of the "Mr. Magoo" character which you agree not to withhold unreasonably.

Subject to your ownership of "Mr. Magoo" and to our rights to use the same only in accordance with the provisions of the license agreement, we will be the sole, exclusive and unlimited owner of the spots (including all negatives and prints thereof, and the original and conformed sound

tracks), and all material therein, including the original storyboards and all material supplied by you hereunder (whether or not incorporated in the spots), and of all rights in connection therewith, including, but not limited to, the right to copyright the spots and the material.

(b) The spots will be clear and free of all claims and encumbrances of any kind whatsoever, will contain such union seals, labels and clearances required for exhibition or telecasting of the films by us to the public, and be produced by you in compliance with all rules and regulations of unions having competent jurisdiction over persons rendering services in connection with production of the spots.

(c) All reports, contributions, payments and taxes to be made and paid with respect to the persons, materials or facilities furnished by you in connection with the spots, including, but not limited to, income taxes, withholding taxes, social security, unemployment insurance, old age pensions, workmen's compensation legislation or other and similar legislation, whether now in force and effect or hereafter enacted, will be made by you, and you will observe all requirements imposed by law upon employers. All contracts entered into by you hereunder, whether contracts of employment or otherwise, will be entered into by you as principal and you will not be deemed to be acting as our or the Client's agent in negotiating or entering into such contracts.

(d) You will procure from the players the standard form written contract required by the SAG

agreement completely filled out and containing a specific provision that compensation in excess of the minimum amounts provided for in the SAG agreement paid to a player for his services in making the spots or for any use or period of use thereof may be credited by you or us or the Client against any re-use fees payable to such player. You will deliver to us concurrently with the delivery of the required prints a copy of each such contract, together with (i) schedule showing the gross amount paid by you to such player for his services in making the spots and the portion in excess of the minimum amounts provided for in the SAG agreement, and (ii) two completely filled in and signed W-4 forms for the player (on which the marital status of each player is indicated).

You represent and warrant that with respect to the use of the voice of Jim Backus as "Mr. Magoo":

(i) You have the right to, and do hereby grant to us the right to, use the name, voice and likeness of Jim Backus as "Mr. Magoo" to advertise and promote the products of Client;

(ii) Your contract with Jim Backus contains a standard "morals" clause, and you will invoke the same in the event we notify you that in our opinion Mr. Backus has violated the provisions thereof; and

(iii) In the event of the death or disability of Jim Backus, you will supply a suitable substitute, subject to our reasonable approval, as the voice of "Mr. Magoo," and we will acquire with

respect to such substitute all of the rights herein granted with respect to Jim Backus.

The foregoing warranties shall not be deemed to apply to material supplied by us or the Client, nor to any claim for compensation of persons supplied by us or the Client.

You agree to indemnify and hold us and the Client, and our and their directors, officers, employees and other persons connected with the spots, and all television networks and the individual stations over the facilities of which the spots are broadcast, free and harmless of and from any and all liabilities from claims, demands, and actions, including attorneys' fees incurred based upon any violation or alleged violation of the foregoing representations and warranties or arising out of the production, television broadcast or other use of the spots under this agreement.

8. You are producing the spots as an independent contractor and not as our or the Client's agent or employee. Notwithstanding anything to the contrary hereunder, neither we nor the Client will have any right to control or direct the details, means, manner or method of performance of your obligation hereunder; and in particular, any use of the character "Mr. Magoo" shall be subject to your approval. No waiver by us of any breach of this agreement shall be deemed to be a waiver of any other provision of this agreement. Neither we nor the Client is obligated to use the spots; our, and the Client's only obligation being to pay the price as and when required hereunder.

We may assign our rights hereunder, or any part thereof, to any reputable person, firm or corporation who may be designated by Client as its agents in our place and stead. This agreement shall be construed as an agreement executed and to be performed in the State of California.

9. Any notice which we may desire to give you under this agreement shall be deemed given when personally served upon one of your officers or when deposited in a receptacle provided for under the postal laws of the United States, postage prepaid, addressed to you at the address which appears first above.

Very truly yours,

FOOTE, CONE & BELDING, INC.

By .....

APPROVED AND ACCEPTED:

UPA PICTURES, INC.

By .....

EXHIBIT 2

November 1, 1955

UPA Pictures, Inc.
and Columbia Pictures Corporation,
Los Angeles, California

Gentlemen:

Your signature in the space below will confirm the following agreement made between us, on behalf of our client, Rheingold Brewing Company and/or Liebmann Breweries, Inc. (herein called "Client"), and you this date:

A. You represent and warrant that you are the sole owners of all rights in and to the name, character, characterization, voice, likeness and other elements of "Mr. Magoo" (all of which are herein collectively called "Mr. Magoo"), that you have the right to grant to us the rights herein set forth, and that you have not heretofore entered into and will not hereafter enter into any agreements which would impair or interfere with or diminish the value to us of the rights herein granted.

B. For $5.00 to you in hand paid, and other good and valuable consideration, receipt whereof is hereby acknowledged, you hereby grant to us an option to enter into an agreement with you upon all of the terms and conditions hereinafter set forth. The option herein granted may be exercised by us at any time, but not later than 48 hours (exclusive of Saturdays, Sundays and holidays) after the delivery to Client in New York City of the storyboards referred to in paragraph A. of the agreement between us and UPA Pictures, Inc. entered into concurrently herewith (herein called "production agreement"), by notice in writing to you. If we do not exercise the option herein granted to us, this agreement shall be of no further force and effect.

C. If we exercise the option, as hereinabove provided, the following terms and conditions shall apply:

1. You grant to us the exclusive right and license during the term hereof, and for a period of 30 days thereafter with respect to material authorized or released during the term, to use "Mr. Magoo" for the purpose of advertising, publicizing and promoting Client, its products and services, in the territory hereinafter specified, over television, radio and space media (including, but not limited to, magazines, newspapers, point of sale exhibits, billboards and all printed publications, other than comic strips which are specifically excluded herefrom. For purposes of clarification the words comic strips shall not be deemed to include cartoons confined to paid advertising space exclusive of comic pages in daily or Sunday papers and comic books.) The territory covered by this agreement shall be the State of California (including for this purpose, as to radio and television, the California signal area, even though reception may incidentally be had outside the State of California, and as to space media, uses made or distributed in California, and also, magazines, newspapers and similar publications published in California, even though there may be occasional distribution of such publications in other areas), and if we exercise the right granted to us under paragraph 3(b), the Eastern territory (including for this purpose, as to radio and television, Metropolitan New York area, New Jersey, the Eastern half of Pennsylvania and New England signal areas, even though reception may incidentally be had outside such areas, and as to space media, uses made or distributed in such areas, and also, magazines, newspapers and similar publications published in such areas, even though there may be occasional distribution of such publications in other areas).

2. The term hereof (herein referred to as "the term" and sometimes as "the original term") shall commence on January 1, 1956 and shall continue for a period of 5 years thereafter, subject to termination by us at the expiration of any year of the term by not less than 30 days advance notice in writing to you; provided, however, that if we terminate the term hereof at the expiration of the first year of the term or of the second year of the term as the case may be, in addition to the payments specified in paragraph 3 hereof, we will pay you concurrently with such termination the following:

(a) If we terminate at the expiration of the first year of the term, $22,000.00 or

(b) If we terminate at the expiration of the second year of the term, $24,000.00.

In the event of termination as herein provided, we shall have no further obligation to you with respect to any payment for any year of the term subsequent to such termination.

3. For the rights granted to us hereunder, we agree to pay to you the following amounts with respect to each year of the term as to which we have not exercised our right of termination hereinabove provided:

(a) With respect to the California territory, the sum of $18,000.00 during each year of the term.

(b) With respect to the Eastern territory, provided, however, that we shall only have the rights herein granted with respect to the Eastern territory and shall only be obligated to make the payments herein provided, if we notify you within 60 days after the exercise of the option specified in paragraph 1 hereof that we desire to have the Eastern territory included within the scope of this agreement:

For each year of the term.....$10,000.00

All amounts specified herein shall be paid to you within 30 days after the commencement of each respective year of the term. Payment shall be made jointly, and we shall have no obligation to see to the application of the proceeds as between you.

4. The rights granted to us shall be exclusive with respect to beverages competitive to products of Client, including beer, beer products and soft drinks, during the first year of the term in the United States of America, and during the balance of the term in the territory above specified, and you agree not to authorize or permit use of "Mr. Magoo" contrary to the exclusivity provisions herein set forth. You further agree not to authorize or permit the use of "Mr. Magoo" in entertainment films of a character detrimental to the products, name or advertising of Client. (For example, you will not authorize or permit "Mr. Magoo" to appear as a proponent of the WTCU, or to be portrayed so as to lead the public to believe that he has been drinking immoderately, or as belittling the "Miss Rheingold Contest," or otherwise causing ridicule or embarrassment to Client.) It is specifically agreed, however, that except as aforesaid, all rights not herein exclusively granted to us are reserved by you and may be exercised freely by you and shall be deemed non-competitive to the rights herein granted.

5. We agree to give credit to UPA Pictures, Inc. and to Columbia Pictures Corporation on all printed material, other than point of sale material, in size of type at least 5% of the size of the credit to "Mr. Magoo," which credit shall read substantially, as follows:

> "See Mr. Magoo at your favorite theatre, Columbia Pictures Corporation-UPA Pictures, Inc. release."

We shall not, however, be responsible for any casual or inadvertent failure to accord you the credit hereinabove specified, or any failure due to acts of third persons beyond our control, but we shall endeavor to correct the same when notified thereof in writing. In connection with television uses of Mr. Magoo, credit shall be given to you on the film, but the same need not necessarily be exhibited on the television screen.

6. We ackowledge that it is of basic importance to you to maintain "Mr. Magoo" as a unique character of distinctive nature and appeal, and we therefore agree that all art work with respect to "Mr. Magoo" shall be subject to your approval and shall be done by your artists, for which we shall reimburse you at your standard cost for new art work, provided only that where feasible we may, subject to your approval, use art work taken directly from television films made by you pursuant to the production agreement.

7. You further agree that if, during the term, you shall decide to license the use of "Mr. Magoo" for the purpose of advertising, publicizing and promoting beer or beer products or beverages competitive thereto in the State of Illinois, you will give us the first opportunity to acquire such license at a price equal to the price of the best bona fide offer which you may determine to accept. Before accepting any such offer, you will give us written notice thereof and of all of the terms thereof and we shall have the exclusive option for a period of 10 days (excluding Saturdays, Sundays and holidays) after receipt of said notice within which to enter into an agreement with you for the license of such rights in "Mr. Magoo" at the price of said offer by giving you written notice of exercise of said option at any time prior to the expiration of

said 10-day period. If for any reason we should not exercise said option but thereafter the offer which you communicated to us should not actually be accepted by you, and such license is not actually granted to another within 60 days after our option shall have expired, then in each such instance, our said option shall revive and we shall again have the right of first refusal with respect to the State of Illinois as herein provided.

8. We shall have the further option to extend the term of his agreement for an additional period of 10 years from and after the expiration of the original term (herein called "the extended term") upon the following terms and conditions:

(a) We shall have all of the rights and licenses specified in paragraphs 1 and 4, and shall comply with the obligations specified in paragraphs 5 and 6 during the extended term.

(b) In lieu of the provisions of paragraph 3, we shall pay you during the extended term, the following:

(i) With respect to the California territory, the sum of $10,000.00 during each year of the extended term.

(ii) With respect to the Eastern territory, provided that we exercise the option for the extended term with respect to such Eastern territory (it being agreed that we may not exercise such option with respect to the Eastern territory if we have not exercised the same option during the original term and that we are not obligated to exercise the option hereunder with respect to the Eastern territory even though we have theretofore exercised such option during the original term) the sum of $10,000.00 for each year of the extended term.

All amounts specified herein shall be paid to you within 30 days after the commencement of each respective year of the extended term. Payment shall be made jointly and we shall have no obligation to see to the application of the proceeds as between you.

(c) The extended term is subject to termination by us at the expiration of any year thereof by not less than 30 days advance notice in writing to you, in which event we shall have no further obligation to you with respect to subsequent years of the extended term.

The option herein granted may be exercised by us by notice in writing to you at any time but not later than 30 days prior to the expiration of the original term.

Very truly yours,

FOOTE, CONE & BELDING, INC.

By .....

APPROVED AND ACCEPTED:

UPA PICTURES, INC,

By .....

COLUMBIA PICTURES CORPORATION

By .....

EXHIBIT 3

....., 1956

UPA Enterprises
and Columbia Pictures Corporation
Los Angeles, California

Gentlemen:

Reference is hereby made to that certain agreement, as amended, entered into betwen you and us on November 30, 1955, hereinafter referred to as the "Licensing Agreement," whereby you granted to us on behalf of our Client, Rheingold Brewing Company and/or Liebmann Breweries, Inc., certain rights in and to your cartoon character "Mister Magoo." You and we now desire to enter into an agreement respecting the use of "Mister Magoo" on beer bottle neck labels or neck wraps and in connection with markings on beer can tops and/or bottoms, and do agree as follows:

1. You hereby grant to us the exclusive right and license to use the name and likeness of "Mister Magoo" in connection with neck labels or neck wraps on beer bottles and markings on beer can tops and/or bottoms.

2. The territory of this license shall be the State of California (including the City of Yuma, Arizona) only.

3. The term of this license shall commence on July 15, 1956 and shall continue for a period of time concurrently with the term of the Licensing Agreement and subject to all provisions of the Licensing Agreement relating to the term of extensions thereof.

4. For the rights granted to us hereunder we agree to pay to you the sum of Five Thousand ($5,000.00) Dollars per year during each year (and pro rata for the portion of the last year of the term prior to the expiration

thereof) of the term hereof. It is understood and agreed, however, that in the event you exercise your rights to extend the term of the Licensing Agreement for a third year, and we elect to pay the sum stipulated in paragraph 2 of the Licensing Agreement to terminate the Licensing Agreement, then and in that event, the term of this agreement shall be deemed terminated without further obligation on our part for the rights granted herein as respects said third year.

5. All artwork required in connection with the exercise of rights granted herein shall be done for us by UPA Pictures, Inc. at their standard studio rate for artwork. It is understood that the charges for designing neck labels or neck wraps on beer bottles and markings on beer can tops and/or bottoms, and preparation of finished artwork for same will not exceed $500.00.

6. We shall have the right, at our election, to extend the territory of this license to include the New York Area (deemed to include the State of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, and Pennsylvania), subject to the following:

(a) If we so elect to extend the territory hereof, we shall give you written notice to that effect within ninety (90) days from date hereof.

(b) If we exercise the option hereunder, the term of this agreement with respect to the New York Area shall run concurrently with the amendment to the Licensing Agreement dated ..... 1956, and the provision specified in the second sentence of paragraph 4 shall apply.

(c) Upon the exercise of our option herein we shall pay you, as additional compensation hereunder,

the sum of Five Thousand ($5,000.00) Dollars as respects the first year's use of "Mister Magoo", pursuant to the terms hereof, and we shall make additional payments of Five Thousand ($5,000.00) Dollars for each additional year (and pro rata for the portion of the last year of the term prior to the expiration thereof) during the term hereof, subject to the provisions of paragraph 4 hereinabove.

7. All terms and conditions of the Licensing Agreement not inconsistent with the terms herein set forth, including, but not by way of limitation, the provisions relating to copyright notices, are deemed a part hereof as though fully set forth herein.

Your signatures, together with ours, hereinbelow, will constitute this a binding and enforceable agreement between us.

Very truly yours,

FOOTE, CONE & BELDING, INC.

By .....

ACKNOWLEDGED:

UPA PICTURES, INC.

By .....

ACCEPTED AND AGREED TO:

UPA ENTERPRISES

By .....

President

COLUMBIA PICTURES CORPORATION

By .....

EXHIBIT 4

....., 1956.

UPA Enterprises
and Columbia Pictures Corporation
Los Angeles, California

Gentlemen:

Reference is made to that certain agreement, as amended, entered into between you and us on November 30, 1955, hereinafter referred to as the "Licensing Agreement," whereby you granted to us on behalf of our Client, Rheingold Brewing Company and/or Liebmann Breweries, Inc., certain rights in and to your cartoon character "Mister Magoo." You and we now desire to enter into a further agreement as respects the matters set forth in the aforementioned agreements, and do agree as follows:

1. You grant to us, on the same terms and conditions as set forth in the Licensing Agreement, the exclusive right and license to use "Mister Magoo" in the following additional territory, hereinafter referred to as the "New York Area": The States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, and Pennsylvania.

2. The term of this license shall commence on the day of the first television broadcast in the New York Area of a "Mister Magoo" filmed commercial but no later than October 15, 1956, and shall continue for a period of time equal in length to the term of the Licensing Agreement and subject to all terms and provisions therein contained relating to the term and extensions thereof.

3. For the rights granted to us herein we agree to make payments to you, in addition to those set forth in the Licensing Agreement, of the sums equal to the

amounts set forth in paragraph 3 of the Licensing Agreement and on the same terms and conditions.

4. The Licensing Agreement is hereby amended to provide that the television rights in respect of "Mister Magoo," as set forth in paragraph 1 thereof, shall include not only the use of 60-second commercials but also the use of 20-second commercials.

5. Paragraph 1 of the Licensing Agreement relating to the territory thereof is hereby amended to incorporate the City of Yuma, Arizona, within the territory. No other term or condition of the Licensing Agreement shall be deemed amended or modified by this paragraph.

6. It is understood and agreed that, in addition to the rights to use "Mister Magoo" now or theretofore granted to us, we shall have the right to use "Mister Magoo" in radio broadcasting (other than in "network" broadcasting as the term is commonly understood in the industry), subject to the following:

(a) The right granted herein is limited to the use of "Mister Magoo" in commercial announcements, none of which shall exceed sixty (60) seconds in length.

(b) Any text material which we propose to use in connection with such commercial announcements shall be subject to the prior approval of UPA Pictures, Inc.

(c) We will contract directly with voice actors to be used in connection with the commerial announcements. However, we will not enter into a contract with any voice actor depicting the voice of "Mister Magoo" without UPA Pictures, Inc. approval of

such actor first had and obtained. This approval, once granted, may be withdrawn at any time if UPA Pictures, Inc. feels the characterization of "Mister Magoo" by such actor might be detrimental to their use of "Mister Magoo."

(d) For the rights granted herein we shall pay you the following:

(i). Five Thousand ($5,000.00) Dollars per year for the rights granted herein as respects the exercise thereof in the New York Area, for a term to be concurrent with this agreement.

(ii) Five Thousand ($5,000.00) Dollars per year (or pro rata for the portion of the last year of the term prior to the expiration thereof) for the rights granted herein as respects the exercise thereof in the State of California (including the City of Yuma, Arizona) for a term to begin on July 15, 1956 and to continue until the termination of the Licensing Agreement.

In the event you exercise your right to extend the term of the Licensing Agreement for a third year, and we elect to pay the sum stipulated in paragraph 2 of the Licensing Agreement to terminate the Licensing Agreement with respect to either the New York Area or California, as the case may be, then, and in that event, the term of this agreement as respects the rights granted herein, shall be deemed terminated without further obligation on our part as respects said third year.

7. All terms and conditions of the Licensing Agreement not inconsistent with the foregoing, including, but not by way of limitation, the provisions relating to copy-

right notice, are deemed incorporated herein and made a part hereof.

Your signatures, together with ours hereinbelow, will constitute this a binding and enforceable agreement between us.

Very truly yours,

FOOTE, CONE & BELDING, INC.

By .....

ACCEPTED AND AGREED TO:

UPA ENTERPRISES

By .....

President

COLUMBIA PICTURES CORPORATION

By .....

ACKNOWLEDGED:

UPA PICTURES, INC.

By .....

President

EXHIBIT 5

....., 1956

UPA Pictures, Inc.
4440 Lakeside Drive
Burbank, California

Gentlemen:

Reference is made to an agreement, as amended, dated November 30, 1955, between you and us, hereinafter referred to as the "Production Agreement," relating to the production of filmed television commercials, hereinafter referred to as "the commercials." You and we now desire to enter into a further agreement as respects the matters set forth in the aforementioned agreement, and do agree as follows:

1. All terms and conditions of the Production Agreement not inconsistent with the provisions hereinbelow shall be deemed incorporated herein and made a part hereof as respects the production of commercials for use in the New York Area (the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, and Pennsylvania).

(a) Without limiting the generality of the foregoing, it is understood and agreed that we shall order at least the number of commercials stipulated in paragraph 4 of the Production Agreement for use in the New York Area, over and above our orders required of us under the terms of the Production Agreement.

(b) It is further understood and agreed that we shall have the right to use commercials made for use in California (including the City of Yuma, Arizona;

in the New York Area and *vice versa*. Any adaptation of commercials in this connection will be done by UPA Pictures, Inc. at their standard studio rate (including overhead). Orders for such work shall not be deemed an "order" within the provisions of paragraph 4 of the Production Agreement.

(c) The term of the Production Agreement, as respects the New York Area, shall be deemed to run concurrently with the term of the agreement executed concurrently herewith between UPA Enterprises, Columbia Pictures Corporation and ourselves.

(d) It is understood and agreed that the answer print of the first commercial to be produced pursuant to this agreement shall be delivered to us no later than October 15, 1956.

2. The second paragraph of subparagraph (a) of paragraph 7 of the Production Agreement is hereby amended by addition of the following language: ". . . . Upon the expiration of the term hereof or as the same may be extended, all rights in and to the commercials and related advertising material shall revert to you as sole owner thereof, and we shall, within 60 days after the expiration of the term return all the physical properties produced by virtue of our license (including the positive prints and negatives of the commercials, advertising material, and the like) to you, or, if you so elect, we shall destroy the same and provide you with our certification of such destruction.

3. Pursuant to an agreement executed concurrently herewith between UPA Enterprises, Columbia Pictures

Corporation and ourselves, we have been granted the right to make and use 20-second filmed commercials. It is understood and agreed as between us that if we order any 20-second filmed commercials, production of said 20-second filmed commercials shall be credited against our minimum guarantee under paragraph 4 of the Production Agreement upon a formula to be mutually agreed upon between the parties hereto.

Your signature, together with ours hereinbelow, will constitute this a binding and enforceable agreement between us.

Very truly yours,

FOOTE, CONE & BELDING, INC.

By .....

ACCEPTED AND AGREED TO:

UPA PICTURES, INC.

By .....

State of California, County of Los Angeles—ss.

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 742 South Hill Street, Los Angeles, California. On the 27th day of March, 1959, I served the within Supplemental Affidavit of Walter H. Liebman in Support of Motion to Quash Service of Summons on the Plaintiffs in said action, by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States post office mail box at Los Angeles, California addressed as follows:

Youngman, Hungate & Leopold
6505 Wilshire Boulevard
Los Angeles 48, California

I certify (or declare), under penalty of perjury,* that the foregoing is true and correct.

Executed on March 27, 1959 at Los Angeles, California.

TERESA WEEKS.

*Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.

Exhibit G.

Coyle and Cooper
742 South Hill Street
Los Angeles 14, California
MAdison 7-9077
Attorney for Defendants

In the Superior Court of the State of California in and for the County of Los Angeles.

UPA Pictures, Inc., UPA Enterprises and Columbia Pictures Corporation, Plaintiffs, vs. Foote, Cone & Belding, Inc., Liebmann Breweries, Inc., and Rheingold Brewing Company, Defendants. No. 698923.

DECLARATION OF FRANK E. DELANO IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS.

Comes now Frank E. Delano, and says:

1. That he is a Vice-President of Foote, Cone & Belding, Inc.

2. That in the City and State of New York, during September, 1955, there were discussions by and between representatives of Liebmann Breweries, Inc. and representatives of United Productions of America for the production of television spot commercials for the use of Liebmann Breweries, Inc. in the New York Television Signal Area; that such discussions continued during the months of October and November of 1955, and drafts of the proposed contracts were prepared. At one time in November of 1955, Liebmann Breweries, Inc. sought United Productions of America to agree to produce television spot commercials for Liebmann Breweries, Inc. for the sale of its products in an Eastern territory, which included the metropolitan New York area, New Jersey, the eastern

half of Pennsylvania, and the New England Television Signal Area.

3. At the same time, Rheingold Brewing Company, a California corporation, was negotiating for the production by United Productions of America of television spot commercials to be used in the California area.

4. Rheingold Brewing Co. is a California corporation. It is a separate corporate entity and different than Liebmann Breweries, Inc., which is a New York corporation. Liebmann Breweries, Inc. does not offer for sale or sell or advertise the sale of its beer or any of its products in the State of California.

5. The original drafts of the proposed agreements included the names of both corporations, and contained proposed terms allowing the distribution of the commercials for Rheingold in the California area, and for Liebmann Breweries, Inc. in the Eastern territory.

6. Subsequently, upon the execution of the written agreement by and between UPA Enterprises Inc., Columbia Pictures Corporation, UPA Pictures Inc., and Foote, Cone & Belding, Inc., as the advertising agency for Rheingold Brewing Company only, the permissable territory for distribution of the commercials was limited to the State of California, including the California Television Signal Area. All references to distribution for use of the commercals in the Eastern area was eliminated from the final draft of the Agreement which was executed. Through an inadvertance and mistake the name of Liebmann Breweries, Inc. was not omitted from the introductory clause of the letter agreements, although the agreements could have no bearing upon its business or the sale of its products since the agreements were limited to licenses and use and televising in the State of California.

7. The contracts entered into by Foote, Cone & Belding, Inc., copies of which are attached as Exhibits A, A-1, B and C to Plaintiffs Amended Complaint in the above entitled action, were entered into by Foote, Cone & Belding, Inc. for and on behalf of, and only for and on behalf of its client, Rheingold Brewing Company which sells its products in California.

8. By reason of the foregoing, the agreements for the distribution of television commercials and the licensing of the fanciful cartoon characters for use and distribution in the State of California did not and were not meant to apply to Liebmann Breweries, Inc.

9. Liebmann Breweries, Inc. has never entered into any agreements with either UPA Pictures Inc. of UPA Enterprises or United Productions of America or Columbia Pictures Corporation for distribution of television commercials in the State of California, or for the use or licensing of any cartoon characters in the State of California. Neither Leibmann Breweries, Inc. nor Foote, Cone & Belding, Inc., on behalf of Liebmann Breweries, Inc., entered into the written agreements attached as Exhibits A or A-1 or B or C to the Amended Complaint of the Plaintiffs in the above entitled action.

I certify under penalty of perjury that the foregoing is true and correct.

Executed January 21, 1959, at Los Angeles, California.

/s/ FRANK E. DELANO
Frank E. Delano

(PROOF OF SERVICE BY MAIL—1013a, 2015.5 C. C. P.)

State of California, County of Los Angeles—ss.

I am a citizen of the United States and a resident of the county aforesaid: I am over the age of eighteen years and not a party to the within entitled action; my business address is: 742 South Hill Street, Los Angeles, California. On the 27th day of March, 1959, I served the within Declaration of Frank E. Delano in Support of Motion to Quash Service of Summons on the Plaintiffs in said action, by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States post office mail box at Los Angeles, California addressed as follows:

Youngman, Hungate & Leopold
6505 Wilshire Boulevard
Los Angeles 48, California

I certify (or declare), under penalty of perjury,* that the foregoing is true and correct.

Executed on March 27, 1959 at Los Angeles, California.

TERESA WEEKS

*Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.

In the District Court of Appeal, Second Appellate istrict, State of California.

Liebmann Breweries, Inc., a corporation, Petitioner, vs. ie Superior Court of the State of California, in and for ie County of Los Angeles, Respondent. UPA Pictures, ic., UPA Enterprises and Columbia Pictures Corpora- on, Real Parties in Interest. 2nd Civil No. 23830.

Certificate of State Court as to Existence of a Federal Question.

On Motion of the Petitioner, Liebmann Breweries, Inc., ppearing specially only, this Court, in addition to the)rders made herein, orders it to be certified and made part of the record in this case that in the Order deny ng Petition for Writ of Mandate made here on or about une 1, 1959, and in the Petition and in the Points nd Authorities in support thereof on behalf of the Peti- ioner, Liebmann Breweries, Inc., appearing spetially only, he said Petitioner insisted and relied upon the following ederal question:

Whether the assertion by the California courts of juris- iction over said Petitioner deprived said Petitioner of ue process of law contrary to the 14th Amendment to he United States Constitution where Petitioner is a for- ign corporation which has never done business in Cali- oria, which has no contacts with the State of Cali- ornia, which was being sued in the courts of California n a cause of action not arising in California, and the urported service on which was not made on any officer r agent of said Petitioner, but was made upon the Cali- ornia Secretary of State and a copy of the Summons and leadings was sent by registered mail to Petitioner in the tate of New York.

It became material to the determination of said case in this Court to decide said question so raised by the Petitioner, Liebmann Breweries, Inc., which question was determined adversely to the said Petitioner, Liebmann Breweries, Inc., as appears by the entry of a Minute Order denying the said Petitioner's Petition for Writ of Mandate.

It is further hereby certified that pursuant to the provisions of Sections 416.1, 416.2 and 416.3 of the Code of Civil Procedure of the State of California, and by reason of the Order of this Honorable Court in the above entitled matter denying the said Petitioner's Petition for Writ of Mandate to compel the Superior Court of the State of California in and for the County of Los Angeles to Quash Service of Summons upon said Petitioner without opinion and without Issuance of Alternative Writ or Order to Show Cause, and by the further denial without opinion by the Supreme Court of the State of California in said Case No. 23830 of a Petition for Hearing, the District Court of Appeal of the State of California, Second Appellate District, is the highest Court of Law in the State of California in which the final decision on the original proceedings brought by the Petition for Writ of Mandate could be had.

DATED: July 17, 1959

ORDERED BY THE COURT,

/s/ WHITE,
Presiding Justice.

In the District Court of Appeal, Second Appellate District, State of California.

Liebmann Breweries, Inc., a corporation, Petitioner, vs. the Superior Court of the State of California in and for the County of Los Angeles, Respondent. UPA Pictures, Inc., UPA Enterprises and Columbia Pictures Corporation, Real Parties in Interest. 2nd Civil No. 23830.

Order Denying a Stay of Proceedings.

On consideration of the Motion of Petitioner, Liebmann Breweries, Inc., for a Stay of Proceedings in the Superior Court of the State of California in and for the County of Los Angeles, being Case No. 698923, pending either the filing of a Notice of Appeal to the Supreme Court of the United States or a Petition to the Supreme Court of the United States for Writ of Certiorari, and considering that this Court in the above-entitled matter on June 1, 1959, denied Petitioner's Petition for Writ of Mandate without Opinion and without issuance of an Alternative Writ or Order to Show Cause, which became final as to this Court immediately after filing on June 1, 1959, it is now

ORDERED by this Court that the Motion to Stay Proceedings is denied on the ground that this Court has no jurisdiction to grant the Motion to Stay Proceedings.

DATED: July 17, 1959.

/s/ WHITE,
Presiding Justice.